

In the Matter of: )  
 )  
Business Meeting )  
\_\_\_\_\_ )

SACRAMENTO, CALIFORNIA

10:00 A.M.

CALIFORNIA REPORTING, LLC  
52 Longwood Drive, San Rafael, California 94901 (415) 457-4417

Commissioners Present (\*Via Phone)  
Robert B. Weisenmiller, Chair  
Karen Douglas  
Carla Peterman

Staff Present:

Rob Oglesby, Executive Director  
Michael Levy, Chief Counsel  
Jennifer Jennings, Public Advisor  
Ken Celli  
Kate Zocchetti  
Gabe Herrera  
Mark Kootstra  
Panama Bartholomy

Also Present: (\*Via WebEx)

\*Mark Stanga, Daikin AC (Americas)  
Monica Schwebs, on behalf of the Applicant  
Hugh Bower, Emanuels, Jones and Associates  
Carlos Fandino, City of Vernon  
Stephen Keene, IID  
Thomas Roth, Southern California Public Power Authority  
Tim Tutt, SMUD  
Tony Braun, California Municipal Utilities Association  
Tim Carmichael, California Natural Gas Vehicle Coalition  
Charles A. White, Waste Management  
Jon Constantino, Coalition for Renewable Natural Gas  
Todd Campbell, V.P. Public Policy and Regulatory  
Affairs for Clean Energy, Clean Energy Renewable Fuels  
Jay Hopper, Landfill Energy Systems  
Charles Helget, representing Republic Services, Inc.  
Melissa Cortez-Roth, California Wind Energy Association  
Michael J. Carroll, Latham & Watkins  
Nick Lapis, Californians Against Waste  
Lenny Goldberg, The Utility Reform Network  
Nidia Bautista, Coalition for Clean Air  
Jeremy Weinstein, California citizen  
Michele Wong, Clean World Partners  
Kevin Best, Real Energy, and representing Ros Roca, Germany  
Paul Sousa, Western United Dairymen  
Michael Boccadoro, Dolphin Group  
V. John White, CEERT  
Tamara Rasberry, SoCal Gas  
Valerie J. Winn, PG&E  
\*Shannon Eddy, Large Scale Solar Association  
\*Frank Mazanec, BioFuels Energy  
\*Laura Wisling, Union of Concerned Scientists

John Leslie, Shell Energy North America

# I N D E X

	Page
1. CONSENT CALENDAR.	5
A. APPLICATION FOR A COMPLIANCE OPTION FOR THE ALTHERMA AIR-TO-WATER SOURCE HEAT PUMP. Possible approval of a Compliance Option that would establish the equipment efficiency ratings necessary to calculate performance of the Altherma heat pump system for combined space heating, space cooling and water heating. This was item number 14 on the Energy Commission Business Meeting Agenda for March 14, 2012, and was continued to this Business Meeting.	
2. SANTA CLARA SC-1 DATA CENTER PHASE 2 PROJECT (Docket No. 11-SPPE-01). Possible adoption of the Committee's Proposed Decision on the Santa Clara SC-1 Data Center Phase 2 Project.	12
3. RPS ELIGIBILITY OF BIOMETHANE. Consideration and possible approval of a suspension to previously adopted guidelines in the RPS Eligibility Guidebook that allow electric generation facilities to be certified as eligible for the Renewables Portfolio Standard if the facilities use biomethane to generate electricity.	18
4. Chief Counsel's Report:	185
a. In the Matter of U.S. Department of Energy (High Level Waste Repository), (Atomic Safety Licensing Board, CAB-04, 63-001-HLW);	
b. Public Utilities Commission of California (Federal Energy Regulatory Commission, Docket No. EL10-64-000); and Southern California Edison Company, et al. (Federal Energy Regulatory Commission, Docket No. EL10-66-000);	
c. BNSF Railway Company v. US Department of Interior, California Energy Commission (U.S. District Court Central District of California-Riverside, CV 10-10057 SVW (PJWx));	

I N D E X (Continued)

	Page
4. Chief Counsel's Report	185
d. Richard Latteri v. Energy Resources, Conservation and Development Commission, et al. (Sacramento County Superior Court, 34- 2011-9985);	
e. Communities for a Better Environment, Robert Sarvey v. California Public Utilities Commission, Energy Resources Conservation and Development Commission, Real Parties in Interest, Pacific Gas and Electric Company, Contra Costa Generating Station, LLC (California Supreme Court, S194079).	
f. Rick Tyler, et al v. Governor of California, Edmund G. Brown, Jr., et al. (Alameda County Superior Court, RG12619687);	
g. California Unions for Reliable Energy v. Energy Resources Conservation and Development Commission, Real Parties in Interest Ormat Nevada, Inc., ORNI 18 LLC, and ORNI 19 LLC (Alameda County Superior Court, RG 12610669).	
5. Executive Director's Report.	185
6. Public Adviser's Report.	185
7. Public Comment.	185
Adjournment	185
Certificate of Reporter	186

R O C E E D I N G S

P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

MARCH 28, 2012 10:12 a.m.

CHAIR WEISENMILLER: Good morning. Let's start the Business Meeting with the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited in unison.)

Good morning. Let's talk a little bit about the flow, the schedule of the meeting. It's actually short in terms of the number of items, but I think we're going to start out with a few moments, a resolution to talk to one of our departing staff, then the Consent Calendar, then Santa Clara, and then the eligibility.

My guesstimate is that the eligibility will come up around 11:00 or so, but certainly there's going to be sometime between now and then. And if anyone wants to step out, our Public Advisor, Jennifer Jennings in the back, will certainly collect your number and call you when we get to item 3. And anyone who wants to speak on any of the items should talk to Jennifer and fill out a blue card. So with that, let's start with the first item. Karen?

COMMISSIONER DOUGLAS: So, hi everyone.

1 Commissioner Douglas. I wanted to recognize Panama  
2 Bartholomy, who is the Deputy Director for our  
3 Renewables and Efficiency Division. He is leaving the  
4 Energy Commission and going to work in the Speaker's  
5 Office and handle Environmental Policy in the  
6 Legislature in the Speaker's Office. So we wish him  
7 well and I'd like to present a Resolution.

8 I had the privilege of working with Panama  
9 when he was an Advisor in my office. I hired him from  
10 then Chairman Pfannenstiel, brought him in as my first  
11 Advisor, and he served as my advisor for quite a while  
12 and through a lot of really intense and challenging and  
13 days that were just tremendously filled with potential  
14 because this was a time when the Recovery Act passed,  
15 this was a time when we were really gearing up to  
16 create a broad set of Recovery Programs, that we were  
17 working on the side on things like the State's Green  
18 Building Standards, on the T.V. Standards, and other  
19 Standards. So, anyway, I wanted to read the  
20 Resolution, even though I should say -- I should thank  
21 the many staff who has helped us both create the  
22 Resolution, and also edit out some of the parts that  
23 maybe needed to be edited out. So, Panama, a very nice  
24 clean Resolution for you:

25 "WHEREAS, Panama Bartholomy has worked for

1 the State of California since February 2002 and with  
2 the California Energy Commission since July 2006, and  
3 in that time has demonstrated a commitment to  
4 excellence and diligent effort on behalf of the people  
5 of the State of California;

6 WHEREAS, Panama, while working at the  
7 California Division of the State Architect, implemented  
8 the largest comprehensive Green Building online  
9 resource for school construction in the country and  
10 worked to reform Building Regulations related to solar,  
11 wind, water, and energy efficiency for schools, and  
12 during his tenure with the California Conservation  
13 Corps developed and implemented programs related to  
14 clean energy workforce training and environmental  
15 management systems; and

16 WHEREAS, Panama served as Advisor to two  
17 California Energy Commission Chairmen..., " and, of  
18 course, that's sort of for a lack of a better word  
19 there, but which the Legislature provided us,  
20 "...providing expert analysis, policy recommendations,  
21 and motivational support on a variety of controversial  
22 and contentious issues related to climate change, land  
23 use, green building, energy efficiency, renewable  
24 energy, electricity, transmission, alternative fuels  
25 workforce development, and other matters; and



1           WHEREAS, Panama, as Deputy Director of the  
2   Energy Efficiency and Renewable Energy Division oversaw  
3   four offices with more than 100 staff, developing and  
4   implementing programs related to energy efficiency,  
5   renewable energy, and energy-related workforce and  
6   economic development; and

7           WHEREAS, Panama contributed to the  
8   development of the State Climate Action Team's approach  
9   to land use-related climate change policies that served  
10   as a framework for Senate Bill 375, was the chief  
11   architect of the Clean Energy Workforce Training  
12   Program, which he insisted on calling Q-TIP, one of the  
13   largest programs of its type in the country, and played  
14   a foundational role in developing and overseeing the  
15   implementation of \$314.5 million in energy-related  
16   programs under the American Recovery and Reinvestment  
17   Act of 2009, bringing long term energy, economic, and  
18   environmental benefits for all Californians, and in the  
19   process creating one of the largest home energy  
20   retrofit programs in the country; and

21           WHEREAS, Panama is a gifted public speaker  
22   who seeks out opportunities to share his passion for  
23   the environment, energy efficiency, community planning,  
24   workforce development, and yoga, who was named Man of  
25   the Year at Humboldt State University in 2001, and

1 deemed to be one of the 100 most influential,  
2 important, and interesting people in Sacramento by the  
3 *Sacramento News and Review* in 2010, and who seems to  
4 know everyone; and

5 WHEREAS, Panama is a creative innovative  
6 thinker who excels at challenging his colleagues to  
7 realize their full potential and stretch their thinking  
8 well beyond the status quo, while dedicating himself to  
9 recruiting new talent and loyally supporting all staff;  
10 and

11 WHEREAS, Panama leads by example when it  
12 comes to reducing his personal carbon footprint by  
13 recycling, using a bicycle and public transportation,  
14 and living, breathing, and even consuming renewable  
15 energy and alternative fuel through his collaboration  
16 with his brother, Obediah, in recycling cooking oil for  
17 fuel;

18 THEREFORE, BE IT RESOLVED, that the  
19 California Energy Commission recognizes and thanks  
20 Panama Bartholomy for his extraordinary diligence and  
21 professional contributions to the well being of the  
22 citizens of California and their environment, and for  
23 reminding us that his self-designation as your public  
24 servant is an honorable goal, and wishes him good  
25 health and all the best in his future endeavors."

1                   So thank you, Panama. [Applause]

2                   MR. BARTHOLOMY: Thank you that was a  
3 beautiful resolution. Thank you, Commissioners, very  
4 much for the time and I see you've implemented a new  
5 program here, so I'll keep my remarks, like my tenure  
6 here, brief.

7                   I was -- I'm honored to have been part of an  
8 organization like the California Energy Commission.  
9 For about 36 years, this organization has had  
10 groundbreaking policies and approaches to energy, and I  
11 am honored to have been a part of one-sixth of that.  
12 And I think that, while much of our legacy rests on  
13 work from earlier decades, I think when we look back at  
14 the last six years we've spent together, that they will  
15 be also some of the most impactful years of the Energy  
16 Commission and the policies we implemented.

17                  I'll just close by reflecting on a comment  
18 that Commissioner Douglas mentioned in the Resolution,  
19 in that nobody does anything at the Energy Commission  
20 by themselves; we have an amazing set of Commissioners  
21 and an absolutely fabulous set of staff implementing  
22 great policies. And so, while my name is on the  
23 Resolution, I'd like to accept it in the honor of the  
24 fantastic teams of individuals within this building.  
25 So thank you very much for the recognition and I look

1 forward to continuing to work with you. [Applause]

2 COMMISSIONER PETERMAN: Just, Panama, I want  
3 to say, as a Lead Commissioner on Renewables, thank you  
4 in particular for your leadership of the Renewables  
5 Division. And your commitment and enthusiasm will be  
6 missed, and we're looking forward to working with you  
7 in your new role. So thank you again for your  
8 contributions.

9 CHAIRMAN WEISENMILLER: Yeah, again,  
10 certainly, Panama, thank you for your enthusiasm and  
11 dedication here, and to achieve the goals we all have  
12 in this administration, and certainly look forward to  
13 continue working with you on those goals in the future.

14 COMMISSIONER DOUGLAS: With that, I'll move  
15 approval of the Resolution.

16 COMMISSIONER PETERMAN: I'll second.

17 CHAIRMAN WEISENMILLER: All those in favor?

18 (Ayes.) The Resolution passes unanimously.

19 MR. OGLESBY: And if I could add my thanks  
20 and recognition of Panama's exceptional service to the  
21 Energy Commission, clearly anyone who has met him and  
22 talked to him for more than a minute recognizes that  
23 he's a man of exceptional talents and abilities, and I  
24 want to wish him well at the Assembly. I know his  
25 commitment to the mission here will be continued in his

1 new role. Thanks, Panama.

2 CHAIRMAN WEISENMILLER: So Consent Calendar.

3 COMMISSIONER DOUGLAS: Move Consent.

4 COMMISSIONER PETERMAN: Second.

5 CHAIRMAN WEISENMILLER: All those in favor?

6 (Ayes.) Let me check, I think we have two

7 representatives from Daikin on the phone. Would you

8 check and see if they want to say anything at this

9 moment?

10 MR. STANGA: Yes, this is Mark Stanga for

11 Daikin AC (Americas). We have nothing to add or say,

12 except to thank the Commission for the approval --

13 unless there's any question.

14 CHAIRMAN WEISENMILLER: No. We just wanted

15 to give you the opportunity.

16 MR. STANGA: Thank you.

17 CHAIRMAN WEISENMILLER: Thank you. Let's go

18 on to Item 2. Santa Clara Data Center Phase 2 Project

19 (Docket No. 11-SPPE-01). Ken.

20 MR. CELLI: Good morning, Chairman

21 Weisenmiller. Good morning, Commissioner Douglas and

22 Commissioner Peterman. Kenneth Celli, C-E-L-L-I, on

23 behalf of the Santa Clara SPPE Committee. The decision

24 before you reflects the Committee's careful

25 consideration of the evidence submitted by the parties.

1 The proposed decision recommends that the Commission  
2 grant the SPPE because the Santa Clara SC1 Data Center  
3 Phase 2 project is less than 100 megawatts and will not  
4 cause or contribute to any significant direct,  
5 indirect, or cumulative impacts to public health,  
6 safety, energy resources, or the environment. The  
7 Santa Clara SC1 Data Center is located in an industrial  
8 area in the City and County of Santa Clara. It's about  
9 a block away from the Mineta Airport.

10           The second phase of the project would install  
11 16 diesel fuel back-up emergency generators and  
12 ancillary equipment, in addition to the existing 16  
13 permitted diesel fuel backup generators that are  
14 already installed at the Data Center. This would bring  
15 it to a total of 32 emergency backup generators. Each  
16 backup generator has a capacity to generate 2.25  
17 megawatts for a combined gross generating capacity of  
18 72 megawatts. The project will not export any  
19 electricity out onto the grid.

20           In this case, there were no Interveners, the  
21 only two parties were staff and the Applicant. As  
22 usual, the public was given ample opportunity to  
23 participate. The public showed up at the informational  
24 hearing, but offered no comments, nor were there any  
25 comments at the Evidentiary Hearing.

1           The Committee recommends that the Commission  
2   adopt the Committee's decision on the small power plant  
3   exemptions for the Phase 2 of the Santa Clara SC1 Data  
4   Center, which has been served on all of the parties,  
5   along with the Errata dated March 22nd, 2012, which  
6   should be in your materials, and it contains three  
7   corrections to the text.

8           With that, the Committee submits the matter  
9   to the full Commission. I'm happy to answer any  
10   questions regarding the decision, itself; otherwise,  
11   the parties are here to address the Commission.

12           MR. LEVY: Commissioners, just a  
13   clarification. There are two items before you on this,  
14   the first is the approval of the Mitigated Negative  
15   Declaration, and the second one is the consideration of  
16   the Draft Order. Thank you.

17           COMMISSIONER PETERMAN: No questions at this  
18   time. If you want to proceed ahead.

19           MR. CELLI: Thank you.

20           COMMISSIONER PETERMAN: Do we want to hear  
21   from the Applicant?

22           CHAIRMAN WEISENMILLER: Yeah. Let's hear  
23   from the Applicant.

24           COMMISSIONER PETERMAN: Is there anything --  
25   do we want to hear from the Applicant or from staff?

1 UNIDENTIFIED SPEAKER: Staff has no  
2 comments.

3 MS. SCHWEBS: The Applicant has no objection  
4 to the entry of the Proposed Decision as written with  
5 the Errata. We do want to add, however, that we very  
6 much thank the Energy Commission staff for  
7 expeditiously returning to this matter and addressing  
8 it, and we also want to thank the City of Santa Clara  
9 for participating in the CEC's process and assisting  
10 with the Applicant and the CEC throughout this process.

11 CHAIRMAN WEISENMILLER: Any public comment on  
12 this decision?

13 COMMISSIONER DOUGLAS: I don't -- not seeing  
14 any public comments -- this is Commissioner Douglas --  
15 I was the Presiding Member on this case, serving along  
16 with Commissioner Peterman on this case, and I just  
17 wanted to say that it's been rare in my experience to  
18 see issues come to resolution so quickly. The  
19 Applicant was very impressive in proactively submitting  
20 information and working out issues, really in advance  
21 of the informational hearing and site visit. Applicant  
22 and staff had had, as I understand it, numerous rounds  
23 of exchange of information, and so I wanted to express  
24 my appreciation to the Applicant and staff for working  
25 through issues quickly, and to the Applicant for being



1 very responsive, and to the City of Santa Clara for  
2 being very much there in the room, in the informational  
3 hearing certainly, but as I understand it, working with  
4 the parties, as well.

5           We made a effort to move this application  
6 through the procedural -- through the process at the  
7 Energy Commission expeditiously, in part because this  
8 is a project that had already entered on some  
9 substantive review, and so there was a lot of review  
10 that we were able to take advantage of, staff was able  
11 to take advantage of. So I just wanted to express my  
12 appreciation to all the parties and, of course, the  
13 Hearing Officer, Ken Celli, who we gave, of course,  
14 very little time to prepare the decision, but who also  
15 volunteered to get the decision done in relatively  
16 short order. So, thank you.

17           If there are no questions or comments, Chief  
18 Counsel can help me here if needed, but I will move  
19 approval of the Mitigated Negative Declaration and the  
20 Draft Order with the March 22nd, 2012 Errata.

21           MR. LEVY: Why don't we do them in separate  
22 votes because the second depends on the approval of the  
23 first.

24           COMMISSIONER DOUGLAS: All right, so, in that  
25 case I will move approval of the Draft Order with the

1 March 22nd, 2012 Errata.

2 COMMISSIONER PETERMAN: I will second the  
3 motion.

4 MR. LEVY: The Mitigated Negative Declaration  
5 first.

6 COMMISSIONER DOUGALS: Ah, okay. Move  
7 approval of the Mitigated Negative Declaration.

8 COMMISSIONER PETERMAN: I'll second.

9 CHAIRMAN WEISENMILLER: All those in favor?  
10 (Ayes.) This item passes unanimously.

11 COMMISSIONER DOUGLAS: And now I will move  
12 approval of the Draft Order with the March 22nd, 2012  
13 Errata.

14 COMMISSIONER PETERMAN: I'll second.

15 CHAIRMAN WEISENMILLER: All those in favor?  
16 (Ayes.) This item also passes unanimously.

17 MR. CELLI: Thank you.

18 CHAIRMAN WEISENMILLER: Thank you. So with  
19 that, we actually moved faster than I thought.

20 MR. OGLESBY: Mr. Chairman?

21 CHAIRMAN WEISENMILLER: Yes.

22 MR. OGLESBY: Before we get started, there  
23 are those maybe watching this and from the overflow  
24 room because the room was quite full at the beginning;  
25 you may want to make an announcement from the dais that

1     there is plenty of seating available now in this room.

2                 CHAIRMAN WEISENMILLER:   Okay.   So with that,  
3     let's make two announcements, one is that at this  
4     moment there is indeed seating in this room, and  
5     certainly encourage anyone who is in the overflow room  
6     to come over.   I think Jennifer Jennings has sort of  
7     notified people of that.   We move fast.   And I was also  
8     going to point out, or perhaps you could explain to  
9     people, that we now have timers.

10                MR. OGLESBY:   So the expectation is that, at  
11     times, the Commission will need to manage its calendar  
12     and the testimony, particularly on items that have a  
13     large number of commenters expected, and so the public  
14     testimony will be limited to three minutes per, and  
15     there is a timer that is visible both from the podium  
16     and, for those who are calling in and using the WebEx  
17     format.

18                CHAIRMAN WEISENMILLER:   And this is our first  
19     time, I think the timers are close, but not precisely  
20     in alignment, we'll probably find.   But anyway, so with  
21     that, staff?

22                MS. ZOCCHETTI:   Thank you.   Good morning, Mr.  
23     Chairman and Commissioners.   I'm Kate Zocchetti with  
24     the Commission's Renewable Energy Office.   With me  
25     today is Gabe Herrera from the Legal Office, and Mark

1 Kootstra from my office.

2           As you know, the Renewables Portfolio  
3 Standard requires California's Electric Utilities to  
4 procure 33 percent of their retail sales from renewable  
5 energy sources by 2020. With the first RPS Eligibility  
6 Guidebook having been adopted in 2004, the Energy  
7 Commission has adopted guidelines that describe the  
8 requirements, conditions, and processes to certify  
9 facilities as eligible for the RPS.

10           Today, staff proposes that the Energy  
11 Commission consider suspending these guidelines and  
12 allow electric generation facilities to be certified as  
13 eligible for the RPS if the facilities use biomethane  
14 to generate electricity. For these purposes,  
15 biomethane means biogas that has been conditioned and  
16 received into the natural gas pipeline system, and  
17 transported to an RPS eligible generation facility.

18           As I will note in my presentation, biomethane  
19 was not addressed as a separate eligible renewable  
20 energy resource category in the Guidebook until March  
21 of 2007. Although the underlying biogas fuel sources -  
22 - digester gas, landfill gas, and gas derived from  
23 biomass -- have always been identified as eligible in  
24 the RPS statutes.

25           Although the passage of Senate Bill X12 in

1 April of 2011 did not change these eligibility  
2 requirements, the new RPS law does establish a  
3 preference for electricity generation that provides  
4 more environmental benefits to the State by displacing  
5 in-state fossil fuel consumption, reducing air  
6 pollution within the state, and helping the state meet  
7 its climate change goals by reducing greenhouse gasses  
8 associated with electricity generation.

9           The current rules in the Eligibility  
10 Guidebook do not adequately address these environmental  
11 goals with respect to biomethane because the current  
12 rules do not require that the use of biomethane  
13 displaces fossil fuel consumption, results in reduced  
14 air pollution, or greenhouse gas reductions. Nor do  
15 the rules establish rigorous requirements to verify and  
16 track biomethane and its associated green attributes.

17           In September 2011, the Energy Commission  
18 hosted a staff workshop to discuss biomethane in the  
19 RPS in light of Senate Bill X12. I have a brief  
20 presentation to provide a framework and overview of  
21 these issues on the Proposed Suspension, if you would  
22 allow.

23           CHAIRMAN WEISENMILLER: Please go for forth.

24           MS. ZOCCHETTI: Thank you. So as you can  
25 see, this is just an outline of the topics that I'd

1 like to cover. I hope to move through this rather  
2 quickly, but I wanted to bring everyone up to speed on  
3 these issues.

4           The Energy Commission's RPS rules statutorily  
5 are to certify generation as eligible for the RPS,  
6 design and implement a tracking system for compliance,  
7 and now, with the passage of Senate Bill X12, to adopt  
8 Regulations for the RPS enforcement for the publicly-  
9 owned electric utilities. In the RPS Statute, however,  
10 for biomethane, the law does not specifically identify  
11 even biogas as an eligible renewable energy resource  
12 for the RPS. The law does identify biomass, digester  
13 gas, and landfill gas, but does not define these terms.  
14 The law is also silent on whether these fuels must be  
15 used to generate electricity on the same site as the  
16 fuels production; it does not specify how these fuels,  
17 if produced off-site, should be delivered to a power  
18 plant for purposes of generating electricity.

19           A brief history of how biomethane went along  
20 in the RPS in 2006, stakeholders came to us seeking  
21 clarification on whether transporting biogas via the  
22 natural gas pipeline system could be eligible for the  
23 RPS. We first addressed this for biomethane in the  
24 March 2007 Guidebook, as I mentioned. Since then, one  
25 facility was certified in 2008, two in 2009, a third in

1 2010, but currently in 2012, in March, we find 16  
2 facilities certified as RPS eligible, with 13 pending  
3 certification, and six are pre-certified with one  
4 pending pre-certification.

5           So to briefly summarize the eligibility  
6 requirements for biomethane, it must be first derived  
7 from an RPS eligible fuel; it must be converted to  
8 electricity in an RPS eligible electric generating  
9 facility; as I noted, it could be co-located at the  
10 fuel production site, or transported via a dedicated  
11 pipeline to an RPS eligible facility; or, it would be  
12 transported off-site as biomethane, as we're discussing  
13 today, to an RPS eligible facility through the natural  
14 gas pipeline system.

15           The receipt point, often called the injection  
16 point for biomethane, may be in any intrastate pipeline  
17 in the WECC, which is the Western Electricity  
18 Coordinating Council, or that is connected to a  
19 pipeline that delivers gas into the state. The  
20 delivery point must be to California if the facility is  
21 located in California, or, if it is outside of  
22 California, it must be directly to the facility.

23           To apply, the RPS Applicant must enter into  
24 contracts for delivery or storage of the gas, with  
25 every pipeline or storage facility operator from the

1 receipt point to the delivery point. Green attributes  
2 must be conveyed to the electric generating facility  
3 for the RECs to be whole.

4 Quantifying the energy production requires  
5 accurate metering at several locations. The volume and  
6 heat content of the biomethane that is injected and  
7 transported into the pipeline must be measured, the  
8 volume and heat content of the nonrenewable fuel at the  
9 electric generating facility, and then, of course, the  
10 amount of electricity generated by the power plant.

11 SBX12 now establishes, as I noted, a  
12 preference for electricity generation that provides  
13 more environmental benefits to the state. The fossil  
14 fuel consumption reduction, or displacing fossil fuel,  
15 reducing air pollution within the state, and reducing  
16 greenhouse gas emissions from electricity generation  
17 are spelled out in the statute.

18 So today the purpose of this Proposed  
19 Suspension is to reexamine our requirements in light of  
20 Senate Bill X12. For example, the current Eligibility  
21 Guidebook does not require biomethane displace fossil  
22 fuel consumption. It does not require biomethane use  
23 reduces air pollution. It does not establish a  
24 rigorous requirement for verifying claimed quantity of  
25 biomethane actually used by the power plant for RECs.



1 It does not establish rigorous requirements to verify  
2 biomethane attributes are transferred to the power  
3 plant. Also, the double counting issue that we're very  
4 concerned with.

5           During the suspension, we would like to  
6 evaluate these issues to ensure the intended benefits  
7 of the new statute are realized. We would like to ask  
8 ourselves, do the RPS requirements for the generating  
9 facilities using biomethane demonstrate that the  
10 environmental objectives are being met? Does our  
11 tracking and verification system have a rigorous enough  
12 system to ensure that the attributes are not being  
13 double-counted? And additionally, should RPS  
14 requirements ensure additionality that many parties  
15 have asked us about?

16           If the suspension is adopted, the conditions  
17 would be that the provisions in the current Guidebook  
18 for certification are suspended as of 5:00 p.m. today.  
19 The suspension would be in effect until the Energy  
20 Commission was to lift it. Facilities that are pre-  
21 certified as RPS eligible would remain so. Facilities  
22 that are certified as RPS eligible would not be  
23 affected, provided that they use biomethane under the  
24 requirements in the addition of the Guidebook that was  
25 in effect when they were certified; that their use of

1 biomethane is limited to the amount and the sources  
2 procured under contracts specifically identified in  
3 their approved Application For Certification; provided  
4 that the facility owners provide documentation of the  
5 biomethane procured before the suspension, including  
6 information from their supply contracts such as term  
7 length, start and end dates, and monthly gas  
8 deliveries; provided that no amendments to extend the  
9 contract term, increase the supply, or otherwise  
10 increase the amount or the availability of biomethane,  
11 no amendments will be accepted during the suspension,  
12 and such amendments would be subject to the eligibility  
13 requirements in place after the suspension is lifted.

14           Just to clarify, certification facilities  
15 must use biomethane that is produced and delivered on  
16 or before the date of the Application For  
17 Certification, not for future or prospective biomethane  
18 supplies. Complete applications for certification or  
19 pre-certification must be received before the effective  
20 date of the suspension and they will be processed under  
21 our current Guidebook.

22           Applications received after the effective  
23 date of the suspension will not be processed and will  
24 be returned to the Applicant. After the suspension is  
25 lifted, facilities will be subject to the requirements

1 in place at that time.

2           Written comments were to have been received  
3 by 5:00 p.m. last Friday, March 23rd. The final draft  
4 of the RPS Eligibility Guidebook 5th Edition is planned  
5 for public release early in April, a draft went out  
6 last fall. We do not anticipate any changes at this  
7 time to the biomethane requirement section.

8           We note that the Legislature may act to  
9 clarify eligibility conditions for facilities using  
10 pipeline biomethane. Also, the Energy Commission will  
11 notify interested stakeholders if we propose to take  
12 action on pipeline biomethane for the RPS. And such  
13 notifications will be posted on our website and sent to  
14 the renewable list server so we provide the list, it's  
15 a little bit missing there, it's  
16 [www.energy.ca.gov/portfolio](http://www.energy.ca.gov/portfolio). You're free to sign up  
17 for the renewable list server if parties have not done  
18 so already. That is the end of my presentation.

19           In light of the noted shortcomings with the  
20 current Rules for Biomethane, staff is now proposing  
21 that the Energy Commission temporarily suspend the RPS  
22 certification of facilities using biomethane so that  
23 these issues can be carefully considered by both the  
24 Energy Commission and the Legislature. Do the  
25 Commissioners have any questions for staff?

1           COMMISSIONER PETERMAN: I think I'm going to  
2 reserve any questions and comments until after we hear  
3 public comment. I will ask our IT Director to put up  
4 that last slide again where the address for  
5 participating in the proceeding can be shown, just so  
6 those on WebEx, or those that didn't catch it verbally  
7 can have it, as well. Thank you.

8           CHAIRMAN WEISENMILLER: Let's turn to comment  
9 by the affected parties, by all the parties. At this  
10 time, I'm going to go in order of public officials with  
11 public agencies first. So with that, Hugh Bower,  
12 Burbank, Pasadena.

13           MR. BOWER: I suppose this is what happens  
14 when you show up early for the hearing, first in line.  
15 I am Hugh Bower with Emanuels, Jones and Associates.  
16 We represent both Burbank and Pasadena. I don't think  
17 it will take me six minutes, but hopefully I can  
18 address both individually.

19           So Pasadena has taken a very progressive  
20 approach to greenhouse gas reduction and, in fact,  
21 Pasadena adopted the provisions of the United Nations  
22 Environmental Urban Accord. In 2009, the City Council  
23 adopted the revised RPS goals and actually set their  
24 own standard at 40 percent by 2020. Obviously, these  
25 exceed the provisions of SBX12. In order to meet these

1 goals, the Council approved the number of renewable  
2 resource contracts, and these contract typically cost  
3 more than nonrenewable resources. The contracts were  
4 authorized in good faith and consistent with the laws,  
5 rules and regulations applicable to RPS qualifying  
6 renewable resources in effect at the time.

7           Today, Pasadena is at 22.2 percent RPS, which  
8 does include biomethane, will increase 2.2 percent per  
9 year until 2020, reaching the 40 percent mark.  
10 Currently, biomethane is about six to eight percent of  
11 the total portfolio and is anticipated to arrive at 19  
12 percent of the 40 percent by 2020. We have five  
13 contracts involving the consumption of biogas, it's  
14 been treated to natural gas pipeline quality,  
15 transported for the consumption in California power  
16 plants. These contracts were authorized with the  
17 specific intent of beating the Category 1 RPS  
18 requirements.

19           Pasadena has indicated to ratepayers that  
20 they are to expect a rate increase of 9.1 percent in  
21 order to meet the 33 percent standard and an additional  
22 2.6 to get to their self-imposed 40 percent. With  
23 respect to the moratorium, we wanted to communicate  
24 that, depending on the length of the moratorium,  
25 Pasadena is concerned that they won't get their newest

1 generator certified. Pasadena currently is using an  
2 older, less efficient power generation facility and is  
3 seeking to replace it with a far more efficient  
4 combined cycle facility. It is our hope that any  
5 moratorium would not impact the ability to replace  
6 power generation facilities during the pendency of the  
7 moratorium.

8           If the Legislature fails to act and the  
9 moratorium stretches out indefinitely, Pasadena will be  
10 left with a contract for biomethane and won't be able  
11 to use the more efficient combined cycle facility. We  
12 are liking it to forcing someone to keep using a 1980's  
13 gas guzzler while you've got a Hybrid sitting in the  
14 driveway. So, with that, we hope you take our comments  
15 into consideration.

16           COMMISSIONER PETERMAN: Thanks. Commissioner  
17 Peterman here. I had a clarifying question. You  
18 mentioned that 19 percent of the 40 percent would be  
19 expected to come from this resource in 2020. Can you  
20 clarify if that means, then, half of the renewable  
21 target? Or one-fifth? You said it was 19 percent --  
22 is it half of 40 percent? Or is it 19 percent of 40  
23 percent?

24           MR. BOWER: I believe it's one-fifth, but I  
25 can get that confirmed and get that to you.

1 COMMISSIONER PETERMAN: Okay, yeah, I would  
2 appreciate that clarification.

3 MR. BOWER: Right. I don't think it's half,  
4 I think it's 20 percent of the 40 --

5 COMMISSIONER PETERMAN: Okay, appreciate  
6 that.

7 MR. BOWER: -- percent.

8 COMMISSIONER PETERMAN: Thank you.

9 MR. BOWER: Moving on to Burbank, similarly,  
10 Burbank shares the state's RPS goal and they actually  
11 adopted -- I believe they were the first City to adopt  
12 the 33 percent on their own in 2007. You should be in  
13 receipt of Burbank's letter regarding the proposed  
14 moratorium. As noted in the letter, Burbank will meet  
15 the goals, but needs some flexibility. Under the  
16 proposed moratorium, the flexibility is being  
17 considered to be suspended, or possibly eliminated.  
18 The fact of the matter is, from our perspective,  
19 biomethane is a renewable resource and we would urge  
20 that it should be continued to be counted as such. If  
21 biomethane is not permitted to be counted towards  
22 meeting the RPS Standard, it is Burbank's assertion  
23 that it is going to increase their ratepayer costs to 7  
24 to 8 percent.

25 Suspending or banning or limiting the use of

1 biomethane does not help the environment, or the  
2 people of the State of California. As noted in the  
3 letter from Burbank Mayor Talamantes, if the moratorium  
4 does not move forward, signed contracts for biomethane  
5 executed prior to the date of the moratorium should be  
6 allowed to be considered for full certification under  
7 the fourth Guidebook rules. And interference with  
8 existing contracts should be avoided at all costs. I  
9 thank you.

10 CHAIRMAN WEISENMILLER: Thank you. Okay,  
11 City of Vernon, Carlos Fandino.

12 MR. FANDINO: Good morning. My name is  
13 Carlos Fandino, I'm the Director of Light and Power for  
14 the City of Vernon. In summary, Vernon strongly  
15 opposes the Proposed Suspension as it would have  
16 negative impacts on the current contracts Vernon has  
17 executed, as well as Vernon's ability to meet the goals  
18 of Renewable Portfolio Standard, RPS Program, included  
19 by Senate Bill SBX12, at a reasonable cost to our  
20 ratepayers. Changing the rules of engagement in the  
21 middle of the RPS compliance period jeopardizes  
22 Vernon's ability to meet the RPS requirements at a  
23 reasonable cost to the 55,000 jobs in Vernon.

24 Vernon has been engaged in securing  
25 biomethane since 2010 and handcuffing our City would



1   jeopardize our rates at a volatile time. Vernon has  
2   had to aggressively raise rates in order to meet the  
3   renewable goals and any further limitation imposed  
4   would only put further pressure on businesses not to  
5   only leave Vernon, but to leave California, as well.  
6   Vernon is a manufacturing hub in Los Angeles Area and  
7   home to many companies that provide goods and service  
8   all over the United States.

9               If the Commission is to consider suspension,  
10   a longer notice period should be given of the meeting  
11   at which the suspension would be considered in order to  
12   allow more time for input from affected entities. A  
13   suspension of any should only operate in relation to  
14   contracts executed after the date of suspension,  
15   allowing entities with existing contracts to apply for  
16   and receive precertification and certification under  
17   current rules. Thank you very much.

18              COMMISSIONER PETERMAN: A follow-up question.  
19   What share of Vernon's RPS target, both in the first  
20   compliance period, or by 2020, is expected from  
21   biomethane, or are you seeking to have from biomethane?

22              MR. FANDINO: Currently, all Bucket 1 is  
23   currently through biomethane.

24              COMMISSIONER PETERMAN: And can you give  
25   quantification about what the megawatt hours is for

1     that?

2                   MR. FANDINO:   It's approximately 240,000  
3     megawatt hours.

4                   COMMISSIONER PETERMAN:   Thank you very much.

5                   CHAIRMAN WEISENMILLER:   Thank you.   Stephen  
6     Keene, Imperial Irrigation District.

7                   MR. KEENE:   Good morning.   My name is Stephen  
8     Keene, I'm the Assistant Manager for Policy and  
9     Regulatory Affairs at IID.   IID is the third largest  
10    publicly owned electric utility in California and  
11    serves approximately 145,000 retail customers.   IID  
12    does not support the Proposed Suspension of the RPS  
13    Eligibility Guidelines related to biomethane.   IID is  
14    on track to meet its RPS and greenhouse gas targets;  
15    IID is mindful, however, they must strive to meet those  
16    requirements without imposing severe hardships upon our  
17    customers, many of whom already struggle to pay their  
18    electric bills.   The use of biomethane in IIDs resource  
19    portfolio, as it transitions to a higher percentage of  
20    renewable generation, has been an integral part of  
21    IID's resource planning to meet 33 percent.   IID is a  
22    strong proponent of the development of renewable  
23    resources in the Imperial Valley.   Toward this end, IID  
24    intends to rely on local renewable generation to meet  
25    its RPS requirements in an effort to promote economic

1 development in the Imperial Valley.

2           The Imperial Valley is one of the most  
3 economically impoverished regions in the country, with  
4 a large low income population, and chronic high  
5 unemployment. The development of renewable generation  
6 projects will bring new jobs to a region that  
7 desperately needs them. However, many of these  
8 renewable generation projects are still in the planning  
9 and development phase, and renewable energy from these  
10 projects would not be available in the immediate  
11 future. In the interim, IID must rely in part upon  
12 biomethane to meets its RPS targets.

13           In December of 2011, IID executed a ten-year  
14 contract for biomethane supplies. The contract was  
15 entered into in good faith reliance on the current  
16 rules. IID promptly applied for certification of all  
17 of its gas-fired facilities in relation to these  
18 biomethane supplies, including its El Centro Unit 3,  
19 which is undergoing a repowering at the present time.  
20 This repowering is desirable, as it will result in  
21 making an existing unit the most efficient in IID's  
22 fleet.

23           After the repowering is complete, the  
24 repowered facility will return to service in June of  
25 2012. Throughout February and March, biomethane has

1    been delivered to the repowered facility and test  
2    burns have been conducted and energy produced. Based  
3    on those test burns, IID has already submitted an  
4    Application for Certification of their repowered  
5    facility. Specifically, on March 22nd, the repowered  
6    facility was scheduled for a 24-hour test burn, with a  
7    full amount of the biomethane contract used for the  
8    generation of energy. For these reasons, IID  
9    respectfully requests that the CEC not suspend the  
10   current biomethane regulations. If such a suspension  
11   does occur, IID urges the Commission to grandfather the  
12   existing biomethane contracts that have already been  
13   executed and process Applications for Certification  
14   that have already been submitted. Thank you.

15               COMMISSIONER PETERMAN: That was an intense  
16   buzzer.

17               CHAIRMAN WEISENMILLER: Do you have any  
18   questions?

19               COMMISSIONER PETERMAN: I do have a question  
20   or two. So just regarding the repowering situation you  
21   mentioned, I just wanted to confirm whether or not that  
22   facility was online now and utilizing biomethane.

23               MR. KEENE: It is online, we haven't accepted  
24   it yet for commercial operation until we complete our  
25   testing, but throughout the month of February and

1 March, we've been conducting test burns using  
2 biomethane.

3 COMMISSIONER PETERMAN: Okay, so it's in the  
4 test phase, but not commercial operations yet.

5 MR. KEENE: Yes.

6 COMMISSIONER PETERMAN: Okay, and I want to  
7 ask you the same question I asked the City of Vernon,  
8 which is what is your expectation around this resource  
9 meeting your compliance, both in the first compliance  
10 period and 2020?

11 MR. KEENE: In the first compliance period,  
12 it's a very small portion of our portfolio of  
13 renewables, it's approximately one percent.

14 COMMISSIONER PETERMAN: And towards your  
15 resource plans for 2020?

16 MR. KEENE: I don't have that number handy  
17 right now, I can check it out and get an answer for  
18 you, Commissioner.

19 COMMISSIONER PETERMAN: Appreciate that.  
20 Thank you very much. Any other questions from the  
21 dais? Thank you.

22 MR. KEENE: Thank you.

23 CHAIRMAN WEISENMILLER: Tom Roth, SCPPA.

24 MR. ROTH: Good morning, ladies and  
25 gentlemen. Good morning, Commissioners, good morning

1 staff. I'm here on behalf of SCPPA, otherwise known  
2 as the Southern California Public Power Authority,  
3 which represents 11 municipalities in Southern  
4 California and an Irrigation District. In December of  
5 -- or, rather, in July of 2010, SCPPA approached me and  
6 asked me to work on behalf of its members to contract  
7 for pipeline biomethane as one of its sources of fuel  
8 for meeting RPS requirements. At this time, since  
9 having embarked on this particular venture in 2010,  
10 there are 11 contracts, four biogas, held by five  
11 publicly-owned utilities that are associated with  
12 SCPPA. These contracts consist approximately of 30,000  
13 decatherms of natural gas consumption, or approximately  
14 80 percent of the statewide consumption of biogas, is  
15 wrapped up in these contracts.

16 I would like to encourage and call upon the  
17 Commission to not act on the suspension for a couple of  
18 reasons having to do with what I consider to be myths  
19 about this business of biogas. The first myth I would  
20 like to bring forward is what I call the Gold Rush  
21 myth. Having served for 40 years as an Executive for  
22 oil and gas companies, primarily majors, I can tell you  
23 that, had those of us in the private sector taken 22  
24 months to contract for such insignificant amounts of  
25 fuel, the highest grade I can imagine I would have

1 given any of those participants would have been "Needs  
2 Improvement," and probably would have given that person  
3 less, and I happen to be that person. But frankly,  
4 there was no Gold Rush. We started 20 some months ago,  
5 our task is completed, and I'd just like to encourage  
6 you not to use the Gold Rush reason as why we have to  
7 do this today. There are others, but I'd be happy to  
8 argue this point with anybody.

9           The second myth that I'd like to cover real  
10 quickly is the biomethane glut, there is apparently a  
11 fear that the streets will be awash in a tidal wave of  
12 biomethane molecules. I can tell you, 30,000 a day  
13 representing 80 percent of the state's consumption  
14 consists and represents something less than 1.5 percent  
15 of the state's total consumption of natural gas for  
16 electric purposes. To me, and I'd be happy to have a  
17 long conversation with anybody here that would like to  
18 talk about that, that's an inadequate reason and belies  
19 the facts. So with that, thank you for this time and  
20 for your consideration.

21           COMMISSIONER PETERMAN: Thank you. I have a  
22 couple follow-up questions if you don't mind.  
23 Regarding -- I have a couple follow-up questions.

24           MR. ROTH: I do not mind at all.

25           COMMISSIONER PETERMAN: Regarding the second

1 point you raised about the glut, I just want to make  
2 sure I understood the statistic correctly. So is it  
3 that current usage in the state is less than 1.5  
4 percent of total consumption of natural gas?

5 MR. ROTH: No, 1.5 percent of the use of  
6 natural gas for electric power. The state's total  
7 consumption is somewhere between 5.5 and 6.0 BcF per  
8 day, we're talking about 30,000 a day, my calculator  
9 comes out at a whole point eight percent, but the state  
10 uses half of that gas for electric generation, so 1.6  
11 percent.

12 COMMISSIONER PETERMAN: So do you have an  
13 estimate of what the potential gas available is, both  
14 in the nation that would be available to participate in  
15 this program?

16 MR. ROTH: Most folks who have studied this,  
17 including information that's available from the  
18 Department of Energy suggests that it's probably  
19 somewhere in the neighborhood of 50,000 decatherms a  
20 day, that's economically available -- that can be  
21 captured by pipelines that could bring it to market.

22 COMMISSIONER PETERMAN: And you said  
23 currently we're using how much in California, in terms  
24 of that --

25 MR. ROTH: By my estimate, we're at about



1 40,000. We're almost peaked.

2 COMMISSIONER PETERMAN: Okay. Also, you  
3 mentioned that it took 22 months for you to negotiate  
4 your contract --

5 MR. ROTH: I'm not bragging.

6 COMMISSIONER PETERMAN: Oh, no. Sometimes in  
7 Government, we don't work the fastest either, so I can  
8 appreciate that. I would welcome your insight or  
9 comments about why the process takes a long time, what  
10 points in the process did you find particularly  
11 laborious?

12 MR. ROTH: You want me to answer that?

13 COMMISSIONER PETERMAN: Yes, please.

14 MR. ROTH: I'll try to do it --

15 COMMISSIONER PETERMAN: Appreciate it.

16 MR. ROTH: -- in less than 42 months.

17 COMMISSIONER PETERMAN: When it comes to  
18 questions, you don't get a timer on it, so you've got -  
19 -

20 MR. ROTH: Well, fine. I'll do it quickly, I  
21 tend to answer things quickly. It varied with each  
22 vendor, but we consistently ran up against what I would  
23 call the -- what to me was a force majeure situation,  
24 but the sellers represented it as the inability of the  
25 facility to perform up to its expectations, whether

1 they were engineering reports, and by a "facility,"  
2 I'm not talking about a generating plant, I mean, you  
3 folks approve these plants, you license them, and my  
4 clients spent hundreds of millions of dollars building  
5 them and they're all running, okay, so it's not the  
6 generating plants I'm talking about, I'm talking about  
7 the landfills, in particular. And so that was a big  
8 obstacle. The vendors wanted escape hatches in the  
9 event that what they were selling didn't match up to  
10 what they said they thought they had, and I'm glad you  
11 brought that up because there is a provision in the  
12 suspension which flies in the face of what we worked  
13 very hard to get. What the industry refers to as a  
14 "hedge." And what a hedge is, is nothing other than a  
15 form of insurance. And any prudent buyer would be  
16 sure, when he's faced with a situation where his supply  
17 is uncertain because a vendor isn't sure whether it's  
18 there or not, would take steps to make sure that he  
19 gets that supply somehow, and therefore we included  
20 what I call additional quantity provisions, and I know  
21 these are suspect for reasons I don't understand,  
22 they're there as a hedge, I would find it commercially  
23 incredible to remove these hedges which were  
24 fundamentally free to the buyer, should not be -- these  
25 were free options, you don't get this very often in

1 business, something for nothing. That was the major -  
2 - the second problem we had was price and we just had  
3 to beat them out of it, we just had to do all sorts of  
4 things I wouldn't even tell my sisters and brothers, my  
5 daughters and sons about, I'd just assume they not know  
6 it, but we did it. And some of them are probably here.

7 COMMISSIONER PETERMAN: You just have a lot  
8 of people in your family.

9 CHAIRMAN WEISENMILLER: You were on the  
10 Internet now, so it's hopeless.

11 MR. ROTH: Oh, my God. That's true, Robert.

12 COMMISSIONER PETERMAN: You were talking a  
13 little bit about some of the contracts that you engaged  
14 in, negotiated, are there conditions in those contracts  
15 to allow the utilities to not have to comply with the  
16 contracts if there is a change in the Regulations?

17 MR. ROTH: Yes, that's something we bargained  
18 very hard for initially, and initially we were unable  
19 to give it. As time moved on, and as things began to  
20 become cloudier, we put our feet fully in -- if you  
21 want to sell anything further, you're going to have to  
22 give us an out. All right? But these were not meant  
23 to be, you know, put in there to get out; the problem  
24 is this is the cheapest thing my clients can get to  
25 meet RPS goals, and anything over that redounds to the

1 benefit -- and that's the wrong word -- of our  
2 ratepayers. So --

3 COMMISSIONER PETERMAN: Thank you, and I hear  
4 your comments, I just wanted to clarify what conditions  
5 there were present for breaking the contract, as  
6 necessary.

7 MR. ROTH: Okay, each contract is a little  
8 bit different, but there are provisions for outs, both  
9 sides, so...

10 COMMISSIONER PETERMAN: I really appreciate  
11 you taking the time.

12 CHAIRMAN WEISENMILLER: Just a follow-up.  
13 Are those provisions sort of a regulatory out? Or are  
14 they in the force majeure clauses?

15 MR. ROTH: Yes.

16 CHAIRMAN WEISENMILLER: Which one?

17 MR. ROTH: Both.

18 CHAIRMAN WEISENMILLER: Both, okay, fine. So  
19 there's explicit Reg out clauses.

20 MR. ROTH: Yeah.

21 CHAIRMAN WEISENMILLER: Okay. Thanks.

22 MR. ROTH: Thank you.

23 CHAIRMAN WEISENMILLER: Tim Tutt, SMUD.

24 MR. TUTT: Good morning, Commissioners. Good  
25 morning, staff, everybody in the room. I'm Tim Tutt

1 from SMUD, and SMUD does not support the suspension of  
2 biomethane at this time. We feel that really, within  
3 your 10-day window for doing these kinds of actions, on  
4 an important issue like this, we feel there really  
5 hasn't been enough time for stakeholders to understand  
6 the implications of the suspension and get that input  
7 to you. We want to bring to your attention that  
8 suspension actions like this have real business  
9 impacts. As an example, SMUD typically goes through  
10 occasional bond sales and we have to disclose this to  
11 the potential bond buyers as a risk to our situation.  
12 We reiterate some of the comments earlier that there  
13 has not been a real Gold Rush here. I mean, in SMUD's  
14 case, we do have a contract that we signed in December  
15 of 2011, but we started negotiating that contract long  
16 before and our Board actually approved it way back in  
17 2010, there was no kind of attempt to get that contract  
18 in under some kind of door.

19           If you do adopt the suspension, we request  
20 that you modify it to avoid stranding these already  
21 signed contracts. This is a potential \$8 to \$10  
22 million cost to SMUD's ratepayers. There is possible  
23 compliance issues for some of the utilities in the  
24 room, I know not really for SMUD because we do have a  
25 new wind development coming on line very soon, and new

1 solar facilities coming on line very soon, and a new  
2 geothermal facility in the works, so we should be okay  
3 in the first compliance period, but we certainly don't  
4 like the idea that this particular resource that we  
5 contracted for in good faith may not end up being part  
6 of our portfolio in the end.

7           So we suggest that you change the suspension  
8 to apply only to biomethane projects if you're going to  
9 adopt them, biomethane projects signed after today's  
10 date, rather than certification as of today's date. I  
11 think that's an easy thing for staff to do, you just  
12 have to look at biomethane contract signing date as you  
13 do your certifications.

14           Two other changes, quickly. We'd like to  
15 place an end date on the suspension, there's no  
16 guarantee of action and having an end date at least  
17 gives the market notice that there's something that's  
18 going to happen, and they might just put things on  
19 hold, rather than getting out of the business  
20 altogether, it disrupts the market less. And I think  
21 you should clearly exempt from the suspension  
22 biomethane and dedicated pipelines, as we've heard that  
23 your intention is, but it's not clear in the notice.

24           Biomethane has long been acknowledged to be a  
25 renewable fuel, it produces a displacement of natural

1 gas on the fuel side, not the electricity side, so it  
2 clearly displaces natural gas. In fact, one year ago,  
3 this Commission adopted the Bioenergy Action Plan 2011,  
4 and in that plan there is a statement that says that  
5 biomethane affords an effective way to increase  
6 renewable energy use and displace natural gas. I don't  
7 think anything has changed from today vs. one year ago.

8           The Bioenergy Action Plan also talked about  
9 State agencies coordinating actions to increase the use  
10 of biogas in the state, and in part this is because  
11 there is an Executive Order that Governor  
12 Schwarzenegger signed that indicated that 20 percent of  
13 the Renewable Portfolio Standard should come from  
14 biomass or biogas resources. I think the State is at  
15 about 2.4 percent today, or at least it was in 2010.  
16 SMUD is different, we've got a significant amount in  
17 our portfolio, but the state overall has a Executive  
18 Order indicating that additional biomethane should  
19 become part of the Renewable Portfolio Standard,  
20 initial biogas, or biomass resources. I'll leave it at  
21 that. Thank you.

22           COMMISSIONER PETERMAN: Mr. Tutt, I have a  
23 couple questions, but before I do, I would ask for  
24 staff to clarify the intent of the notice as it  
25 pertains to dedicated pipelines. Mr. Herrera.

1           MR. HERRERA: Good morning, Commissioner  
2 Peterman, Gabe Herrera with the Energy Commission's  
3 Legal Office. The Notice indicates it applies only to  
4 biomethane, which in the Guidebook is defined as  
5 biomass that has been conditioned and injected into the  
6 natural gas pipeline system for delivery. The Notice  
7 did not apply to dedicated pipelines where you've got  
8 fuel flowing directly from the source of production to  
9 the power plant, or, for example, biogas that might be  
10 used on site to generate electricity, or biogas that  
11 might be transported directly from the production site,  
12 say, by truck or rail, to the power plant. So just  
13 limited to the biomethane delivered through the natural  
14 gas pipeline system.

15           COMMISSIONER PETERMAN: Thank you for that  
16 clarification. Mr. Tutt, you mention that a  
17 significant amount of SMUD's RPS compliance is expected  
18 to come from biomethane. Could you provide specific  
19 numbers?

20           MR. TUTT: Commissioner, in 2010, nine  
21 percent of our RPS energy came from biomethane. We do  
22 expect with the new contract that we have signed, but  
23 is not yet delivering gas, that by 2014-2015, that  
24 amount will increase to about 14 or 15 percent. And of  
25 course, we would look at other biomethane options as we



1 got out towards 2020 in combination with any other  
2 resources that we may need to fulfill our RPS  
3 obligations.

4 COMMISSIONER PETERMAN: If I'm correct, SMUD  
5 has a couple different types of biomethane resources;  
6 they procure dedicated biogas resources, the dedicated  
7 pipeline, the natural gas pipeline system, could you  
8 just speak to the couple different types of projects  
9 that you have?

10 MR. TUTT: Sure, Commissioner. We do have,  
11 as I have indicated, one biomethane contract from a  
12 Texas landfill, and that contract was signed back in  
13 2009 or 2008, started delivering in 2009, so we've got  
14 gas coming under that contract for, I believe, 15 or 20  
15 years. We also are producing biogas at the Sacramento  
16 County Wastewater Treatment Facility, and we had been -  
17 - we are currently taking that biogas and putting it  
18 into a dedicated pipeline and also burning it at our  
19 Cosumnes Combined Cycle Power Plant. And then there's  
20 the new contract, which isn't delivering yet, that I've  
21 told you about. We also, of course, have been active  
22 in helping local dairies develop their own biogas on-  
23 site use and have two or three of those projects in our  
24 portfolio, plus a couple of others that are being  
25 developed. You know, there is always questions and

1 it's a tradeoff between burning that biogas on-site  
2 vs. trying to clean it up and putting it into a  
3 pipeline. So, case-by-case, we would make a decision  
4 on which is the best action to pursue.

5 COMMISSIONER PETERMAN: And currently are  
6 those dairies using the electricity on-site -- the  
7 biogas on-site?

8 MR. TUTT: Those dairies are currently using  
9 the biogas on-site and providing electricity to us.

10 COMMISSIONER PETERMAN: And you propose a  
11 couple options, alternative options, the Commission  
12 could take in addition to the suspension proposed; and  
13 they all pertain to information in contracts. Would  
14 you be willing to submit to the Energy Commission all  
15 of your contracts for biomethane for review?

16 MR. TUTT: I am sure that we would be happy  
17 to do that. I guess it's probably above my pay scale  
18 to commit to that.

19 COMMISSIONER PETERMAN: Understandable,  
20 you're the one in front of me, though.

21 MR. HERRERA: You can go ahead and commit if  
22 you want.

23 MR. TUTT: I will certainly take that back.

24 COMMISSIONER PETERMAN: Fair enough. And the  
25 final question I'll ask you is, you mentioned the

1 potential cost effects to the RPS, and I was  
2 wondering, then, since you brought that up, if you  
3 could speak to your utilities and the various public  
4 utilities' roles in determining cost containment  
5 provisions in this new RPS.

6 MR. TUTT: Certainly. That's all kind of all  
7 to be worked out, I believe, as we go through the RPS  
8 Regulations. But SMUD, as a POU, did adopt an  
9 Enforcement Plan in December of last year and, in our  
10 Enforcement Plan, we did talk about our intent on cost  
11 containment and we basically suggested that, for us,  
12 that meant that there would be no increase in our  
13 ratepayers' rates, beyond the rate of inflation, unless  
14 we have identified and brought to bear other benefits  
15 to our ratepayers that would allow that increase to  
16 happen.

17 COMMISSIONER PETERMAN: So regardless of the  
18 Energy Commission's actions today, it is within your  
19 utility's discretion to determine cost limitations on  
20 the RPS, and cost impacts from the RPS?

21 MR. TUTT: I would like for it to end up  
22 being within our utility's discretion, but I will --  
23 I'm not sure what's going to happen as we go through  
24 the regulatory process with the CEC.

25 COMMISSIONER PETERMAN: And I appreciate this

1 is all the implementation of the RPS is being worked  
2 out in real time, I'm just referencing back to what the  
3 legislation has, at least in terms of there is a role  
4 for your organization in determining that.

5 MR. TUTT: That is correct, the legislation  
6 allows us to adopt cost constraints consistent with  
7 what's happening with retail sellers in effect, or with  
8 what the law says for retail sellers, so how that  
9 consistency is interpreted and how our cost constraints  
10 that we've adopted get reflected or interpreted in the  
11 regulatory process is still in the future to determine.

12 COMMISSIONER PETERMAN: Great. Well, I  
13 appreciate your answering my questions. Anyone else?

14 CHAIRMAN WEISENMILLER: Yeah, I had one. In  
15 terms of the gas you're using at this point, I assume  
16 it's also part of your greenhouse gas strategy, so what  
17 sort of tracking system do you have to deal with the  
18 basic issues we've spelled out in our Order on that?

19 MR. TUTT: Well, yes, Commissioner, or  
20 Chairman. The biomethane we're using is part of our  
21 greenhouse gas strategy. We have a couple of staff  
22 that do mandatory reporting requirements for the ARB  
23 and it does take a significant amount of work to go  
24 through that. We also, of course, hire an independent  
25 verifier to verify that all the information in those

1 reports is correct and that, if we don't have that, we  
2 actually risk our entire allocation potentially of  
3 allowances under the cap-and-trade structure, we get a  
4 negative or adverse verification statement for those.  
5 So we're fairly careful at making sure that information  
6 is correct. Much of that happens in the contracting  
7 phase and in the information that we provide to your  
8 staff as we develop our contracts for biomethane and  
9 identify the links, there's access stations all the way  
10 along. We have a person who takes the biomethane  
11 reports that we get from our contracts and calculates  
12 the amount of biomethane that would mean in terms of  
13 kilowatt hours at Cosumnes and files monthly REC  
14 information that WREGIS and all the electricity RECs  
15 from our biomethane are tracked in WREGIS. We in the  
16 long run expect biomethane or similar resources to be a  
17 key strategy in our Board's goal to reduce our  
18 greenhouse gas emissions, it's still only 10 percent of  
19 our 1990 emissions. I mean, if we aren't able to use  
20 sort of dispatchable local power plants to achieve that  
21 goal, we're not sure that we can make it in the long  
22 run, so we're trying to find a way to do that in the  
23 long run. Biomethane right now is one way that we see.  
24 There probably are other ways as we look out further  
25 into the future, I'm not going to predict 20 years out,

1 or 30 years out, but....

2 COMMISSIONER PETERMAN: Do you see a need for  
3 improved verification system for tracking the  
4 biomethane resource and its environmental attributes?

5 MR. TUTT: I don't know that I can answer  
6 that question because I have not been deep in the  
7 details of the verification structures. I would say  
8 that, certainly, verification is clearly happening  
9 today and, to the extent that it can be improved upon  
10 in a cost-effective way, I think that would be  
11 reasonable. But I don't know what is needed to upgrade  
12 verification, I have not been in the details.

13 COMMISSIONER PETERMAN: Okay, I appreciate  
14 that. Thank you.

15 CHAIRMAN WEISENMILLER: Tony Braun.

16 MR. BRAUN: Good morning, Mr. Chairman,  
17 Commissioners. Tony Braun on behalf of the California  
18 Municipal Utilities Association. I don't want to  
19 reiterate many of the points that have already been  
20 mentioned by our members and, also, I think you'll hear  
21 today, we've submitted a letter previously to the  
22 Commission, indicated that we opposed the moratorium,  
23 and that, at a minimum, if there is a going to be a  
24 moratorium going forward, that the mechanisms to  
25 implement it honor the existing fuel purchases that our

1 members have spent a lot of time and money on to make  
2 those happen in good faith reliance, and towards a  
3 strategy of compliance with the 33 percent goals that  
4 are either adopted by their City Councils, or now as  
5 embodied by the Legislature.

6 I'm not an expert on biomethane, so what I  
7 wanted to do is -- and I think you're going to hear a  
8 lot about the mechanics of these deals -- I would note  
9 that, you know, over the last several years the  
10 emphasis on renewable procurement has been  
11 extraordinary, beyond anything that I've experienced in  
12 the 20 years of representing my clients on energy  
13 issues, and they don't sit still for regulatory  
14 development, they don't sit still as bills are  
15 negotiated over a multi-year timeframe. These people  
16 were acting in good faith as part of the stewardship of  
17 their utilities, to move forward with deals, and they  
18 did so in good faith reliance, thinking that they were  
19 promoting the policies of the State, not undermining  
20 the policies of the State. And I would hate to see  
21 that that type of implication or inference would come  
22 out of any of these discussions.

23 I want to talk a little bit about connecting  
24 the dots in the one minute and 20 seconds I've got  
25 left. I think that a critical thing that needs to

1 happen if we're going to achieve RPS is to start  
2 connecting the dots much more thoroughly with respect  
3 to the varied goals that we have, reliable system  
4 operation, meeting RPS, meeting the GHG mandates.  
5 These are thermal units that this biofuel is being run  
6 through, that are often in load centers that are  
7 located oftentimes in the LA Basin, they're baseload  
8 units. You can see any ISO study that talks about the  
9 system-wide implications of 33 percent, we're  
10 predicting lower capacity factors for the existing  
11 fleet, but still meeting the existing fleet to keep the  
12 lights on; it's not just a matter of ramping, although  
13 that is a concern, it's a matter of being able to meet  
14 the local needs of the system. Putting biofuel through  
15 these efficient plants does that, it meets the varied  
16 needs. It greens the peak, which I've heard quite a  
17 bit from many advocates in this room, has been a long  
18 time goal of California. It increases the use of the  
19 existing fleet and the capacity factor, which is  
20 expected to go down, therefore adding even more cost  
21 pressures on consumers in California to implement these  
22 goals.

23           Again, it does allow flexibility, it gets to  
24 the OTC problem that the L.A. Basin is going to have by  
25 helping to maintain the existing fleet as an economic



1 resource. And it helps particularly with CMUA members  
2 that have GHG challenges because they're replacing --  
3 it's a strategy for replacing their coal. I would add  
4 just in closing two items that have come up this  
5 morning. Regulatory outs are not free. Long times,  
6 there's usually lengthy negotiations associated with  
7 imposing those. You can imagine the negotiations of  
8 potential litigation that could ensue. The regulatory  
9 outs cost a lot of money.

10           The goal of the POUs is 33 percent  
11 compliance. We do have clear authority to establish  
12 cost limitations, but that's a second tier strategy,  
13 the first tier strategy is to get to 33 percent, and so  
14 I think we're really focused on that goal, not what are  
15 ways around the 33 percent obligation. Thank you.

16           COMMISSIONER PETERMAN: Thank you very much  
17 and I appreciate that. A couple questions. So can you  
18 speak to the total megawatt hours expected from  
19 biomethane, from your members in the first compliance  
20 period of 2020?

21           MR. BRAUN: No, I can't speak to that as a  
22 group, it's so varied. Some have none, many have none.  
23 Major utilities like SMUD -- it's always good to put in  
24 perspective as far as the load is concerned in  
25 California, L.A. is half of the POU load in California,

1 SMUD is another half of the remaining half, so already  
2 we have the two largest utilities that are 75 percent  
3 of the load that have a proactive biogas strategy. So  
4 they would drive the numbers, and obviously Pasadena,  
5 these are medium-sized utilities within the CMUA  
6 rubric. I can't give you a number, but it is certainly  
7 something we can look to provide to you.

8 COMMISSIONER PETERMAN: And we heard from the  
9 City of Vernon that they're expecting to meet 100  
10 percent of their Bucket 1 requirement with biomethane.  
11 Are you aware of other public utilities that expect to  
12 meet the majority of their Bucket 1 compliance with  
13 this resource?

14 MR. BRAUN: I don't know if it's a majority,  
15 I do know that they have told me clearly that, as other  
16 than a Bucket 1 resource, it's difficult to justify  
17 from an economic basis. That may be driven by the fact  
18 that the Bucket 3 resources have become much less  
19 valuable since the passage of the law, but in any  
20 event, you know, certainly the strategy was attempting  
21 to utilize the existing fleet and also to run renewable  
22 fuel through that to meet Bucket 1 requirements. And I  
23 would say, you know, the prospect of building extensive  
24 lines out through the desert and other strategies, you  
25 know, as an alternative strategy to meet the Bucket 1

1 requirements, is very daunting for the POU community.  
2 Some of those major multi-billion dollar strategies are  
3 very difficult for them to execute, you know, with a  
4 couple of exceptions. They come with a lot of  
5 pitfalls, whether it be siting, environmental  
6 disturbance of, you know, desert habitat, etc., we've  
7 all read the new stories. So doing something close to  
8 home is a much more palatable strategy for a community  
9 utility.

10 COMMISSIONER PETERMAN: Thank you. And in  
11 the comments that you filed, and a bit today when you  
12 spoke, you mentioned there's information in contracts  
13 that could be useful to the Commission. Can I get your  
14 commitment to work with the Energy Commission and all  
15 of your members as we work to clarify or address these  
16 rules, to get all that contract information we deem  
17 necessary to sort through some of these issues?

18 MR. BRAUN: Absolutely.

19 COMMISSIONER PETERMAN: Thank you.

20 CHAIRMAN WEISENMILLER: Thank you. Next  
21 speaker, Tim Carmichael.

22 MR. CARMICHAEL: Good morning, Commissioners.  
23 Tim Carmichael with the California Natural Gas Vehicle  
24 Coalition. I'm here today because I care about, and my  
25 members care about, biomethane as a transportation fuel

1 and we're very concerned that the Proposed Suspension  
2 is going to harm the prospects for using biomethane as  
3 a transportation fuel because it's going to harm the  
4 developers of biomethane projects today, the very same  
5 developers that are likely to be in place selling  
6 biomethane as a transportation fuel or developing it  
7 for sale as a transportation fuel. We're also  
8 concerned because we think this suspension, or Proposed  
9 Suspension, harms the prospects for biomethane  
10 development in the State, which seems to be, in all the  
11 conversations I've had around this issue, a common  
12 goal, and yet most people I talk to are very concerned  
13 that the suspension will harm those prospects, not  
14 help.

15           And it may well harm the overall RPS Program.  
16 And this is a concern for me, personally, as an  
17 environmental advocate, but also because of the ripple  
18 effect that I mentioned into the future for the  
19 transportation prospects for this fuel. There are a  
20 lot of financial interests at stake, and you've heard  
21 from a number of the municipal utilities, in the length  
22 of time that they've worked on some of these contracts,  
23 and you will hear from some of the developers and the  
24 length of time they have worked on developing projects  
25 to feed into the RPS, fully believing they were

1 complying with California law and this agency's  
2 guidance. And, in fact, if you look at every other  
3 document that this agency has put out in the last  
4 several years, you are champions for biomethane, you  
5 are champions for biomethane in the Renewable Portfolio  
6 Program. So it's just a very difficult and potentially  
7 hazardous shift that this agency is proposing to take.  
8 I'm personally frustrated because I've been engaging on  
9 this issue for six or eight months, and I feel like the  
10 agency has missed an opportunity to embrace some of the  
11 proposals that have been put forward, that would  
12 provide a reasonable transition for the industry and,  
13 by that, I mean the developers of these projects and  
14 the utilities that are buying the fuel, and provide the  
15 security to the opponents of biomethane, you know,  
16 those that have serious concerns about whether it's a  
17 Gold Rush scenario, or otherwise, that it somehow  
18 undercuts other renewables by putting some constraints  
19 on a transition period, you could provide those  
20 protections, those are proposals that have been put  
21 forward by my members and I don't understand yet why  
22 the CEC has not embraced that. And I believe, if you  
23 do, 90 percent of the opposition to this suspension  
24 goes away because it gives the industry a reasonable  
25 transition, some financial security, and it protects

1 against the "worst case scenarios" that some of the  
2 opponents of biomethane have put out there.

3 My final thought is, Commissioner Peterman,  
4 you know, based on your questioning this morning,  
5 you're obviously concerned about the percentage of  
6 compliance that some of the utilities are intending to  
7 use biomethane for RPS compliance. And I appreciate  
8 that. And I personally am not at all supportive or  
9 enthusiastic about the scenarios where a utility is  
10 going to try and do a majority of their compliance with  
11 biomethane; but if you look at the data which I've got  
12 to believe this agency has access to, because it's been  
13 shared with us in meetings with legislative staff, if  
14 you look at the statewide scenario, we're talking about  
15 a very small fraction of RPS compliance, a very small  
16 fraction of total power supply. Even if all of the  
17 contracts are fulfilled in 2020, we're talking about a  
18 very small fraction. And it seems like we're taking  
19 potentially a big risk here with a wonderful program  
20 over, you know, a fight about a small percentage that  
21 every utility in the room will tell you they are  
22 pursuing because they think it's the most cost-  
23 effective way to comply and keep their rates down for  
24 their customers. And I think you're missing an  
25 opportunity here. Thank you very much.

1                   COMMISSIONER PETERMAN: A couple questions.  
2   You mentioned you have a proposal that you think will  
3   eliminate 90 percent of the opposition to what the  
4   Energy Commission is considering today. Would you like  
5   to be more explicit in what that proposal is, just for  
6   the benefit of all those in the room and on the phone?

7                   MR. CARMICHAEL: The two key points, and, you  
8   know, these can be tweaked, but the Proposed Suspension  
9   throws into question contracts that have been placed  
10  for a while. And that, to me, is really silly, and it  
11  may not be the intention of the Agency, but there are a  
12  lot of very smart attorneys that have looked at your  
13  proposal and reached the same conclusion, it throws  
14  into question contracts that have been in place for a  
15  while. That, to me, should not even be a point of  
16  discussion. Even, I think, the most ardent opponents  
17  that we've encountered on this issue over the last six  
18  to eight months think that that's dangerous pool and  
19  there's no benefit to trying to fight that fight. So  
20  that's issue 1. Issue 2 is what is your transition  
21  strategy? This is not a small change, this is a huge  
22  change to what all the companies in this room, and  
23  others that I'm sure are listening in, believed were  
24  the rules, and what CEC and the State wanted them to  
25  do. To implement the suspension today with 10 days

1 notice seems to me as precipitous. And my members  
2 have, you know, in various written statements, as well  
3 as face-to-face meetings, suggested that, if you had a  
4 transition period this year, that required that gas was  
5 flowing by a certain date, you would acknowledge that a  
6 lot of these projects have been in development for a  
7 long time and, in fact, that's the reality for this  
8 fuel, and if you set a time, whatever your date is, you  
9 know, this year, a year from now, you couldn't start a  
10 project today and be compliant with that, you couldn't  
11 get gas flowing within a year if you haven't gone a  
12 long ways down the road to raise money to do your  
13 engineering, probably even started your construction.  
14 And so there are a lot of companies, I believe, that  
15 are out there with these projects in development that  
16 will be harmed seriously because of the timing of your  
17 implementation. And I believe by having such a  
18 transition, you know, gas flowing by a certain date,  
19 you protect against what some have characterized as a  
20 Gold Rush scenario because, like I said, you couldn't  
21 start today to try and get in under the wire, and get a  
22 project up and running this year, it's not physically  
23 possible.

24 COMMISSIONER PETERMAN: Thank you. You've  
25 expressed concern about the effect of the Proposed



1 Suspension on contracts that have been in place for a  
2 while. What do you constitute as a while? Does that  
3 include contracts that are signed today? Does that  
4 include contracts that were signed last week?

5 MR. CARMICHAEL: No, no, I'm talking about  
6 contracts that were signed last year, the year before  
7 that, the year before that. That's what I'm talking  
8 about.

9 COMMISSIONER PETERMAN: Thank you. And  
10 although the focus here today is on the RPS, and  
11 particular, since you are representing some of the  
12 interests and concerns of the transportation industry,  
13 I wondered if you could indulge me for a while and just  
14 talk specifically about to what extent is biomethane  
15 currently playing a role in the transportation sector?  
16 What are projections going forward, you know, a bit  
17 more information?

18 MR. CARMICHAEL: The role in the  
19 transportation sector today is very limited. Chuck  
20 White from Waste Management, I think, is going to make  
21 comments and can probably elaborate on this point, but  
22 Waste Management is probably the biggest user of  
23 biomethane in their vehicles today and it's because CEC  
24 helped them develop a project here in the state to  
25 capture the fuel for transportation purposes. As far

1 as the potential for this fuel, it is -- and this is  
2 not my perspective -- it is my perspective, it's not  
3 only my perspective -- talk to U.C. Davis, talk to U.C.  
4 Berkeley, talk to any of the energy labs, it is one of  
5 the best prospects for low carbon fuels, for heavy-duty  
6 transportation in this country, period. CalStart, I  
7 think, had an estimate a year or two ago that about 20  
8 percent of heavy-duty transportation fuels in  
9 California could be met by biomethane in the near term,  
10 and that's this decade. That's, I think, an aggressive  
11 goal, but you're talking about a 90 percent reduction  
12 in greenhouse gasses compared to diesel. And if it  
13 could supply 20 percent of the heavy-duty  
14 transportation fuel needs, that would be a huge  
15 accomplishment for our state. It also has the  
16 potential to blend with fossil fuel natural gas, and  
17 you could play out scenarios where you get 25 percent  
18 greenhouse gas, 50 percent greenhouse gas benefit, and  
19 spread it across a greater percentage of the fleet.

20 COMMISSIONER PETERMAN: So what do you see as  
21 the barriers to the development of biomethane for  
22 transportation purposes?

23 MR. CARMICHAEL: There are a few and --

24 COMMISSIONER PETERMAN: Please.

25 MR. CARMICHAEL: -- let's start with the

1 barriers to developing biomethane in the State of  
2 California, period. Whatever you want to use the fuel  
3 for, there are barriers to developing biomethane in the  
4 state today. Probably the most significant barrier  
5 that needs to be addressed is how do you move the fuel  
6 around. Let's say you've got, whether it's a  
7 collection of dairies, you've got a waste water  
8 treatment plant, you've got an Ag waste stream, you've  
9 got a landfill, how do you move that fuel to where a  
10 good sized fleet or a number of fleets can use that  
11 fuel? Waste Management, as I mentioned, is using the  
12 fuel in their vehicles that serve as a specific  
13 landfill, that's a very limited market, if you will.  
14 So the transportation of the fuel is a big issue.

15           The resources to develop the projects is a  
16 big issue. And I implied, but didn't state directly,  
17 one of my concerns about the suspension and the ripple  
18 effects is, you'll put a damper on the venture capital  
19 money that is excited about this fuel and excited about  
20 other renewables in the state by saying, "Whoa," you  
21 know, the rules get changed in a flash, even though we  
22 thought this was a long term investment. So I'm  
23 worried about that.

24           And then there's the cost issue. Today,  
25 biomethane is significantly more expensive than fossil

1 fuel natural gas, roughly four or five times more  
2 expensive. And so for the foreseeable future, you need  
3 either some sort of incentive funding from public  
4 interests, or some sort of ability to monetize your  
5 carbon benefit, you know, in using that fuel in your  
6 vehicles.

7 COMMISSIONER PETERMAN: Thank you. That was  
8 very useful and helpful information. Any other  
9 questions from the dais? Thank you very much.

10 MR. CARMICHAEL: Thank you.

11 CHAIRMAN WEISENMILLER: Chuck White, Waste  
12 Management.

13 MR. WHITE: That you very much,  
14 Commissioners. Chuck White with Waste Management. I  
15 don't think I need to give testimony because Tim  
16 already addressed our issues, but I'll proceed anyways.  
17 Waste Management is the largest provider of solid waste  
18 recycling services in North America. We're really  
19 involved in renewable energy development. We've got  
20 about 50 million tons of organic waste that we handle  
21 principally in landfills now, but we want to move it  
22 out of landfills. We generate a lot of renewable  
23 energy for landfilled gas to onsite power, landfilled  
24 gas in dedicated pipelines, landfilled gas to LNG for  
25 transportation fuels such as our Altamont facility;

1 we're now producing 13,000 gallons a day of the lowest  
2 carbon fuel commercially available in California, and  
3 we distribute it in trucks to fuel our fleet statewide.  
4 We're also interested in getting landfilled gas into  
5 utility pipelines for distribution for RPS and  
6 transportation. However, as you know now, you can't  
7 put it in a pipeline in California. And we're also  
8 looking at pre-landfill diversion to anaerobic  
9 digestion and other technologies, and once we produce  
10 that methane, we'd like to be able to distribute it in  
11 pipelines.

12           In state right now, California is primarily  
13 using landfill gas to produce renewable energy onsite  
14 with engines and turbines, yet right now, that's really  
15 not very efficient and has emissions associated with  
16 it. Most of the Air Districts in California are  
17 looking very carefully at our emissions, South Coast,  
18 Bay Area, San Joaquin, are all putting measures  
19 together that are going to reduce our ability to  
20 generate power on-site using biogas and biomethane.  
21 South Coast Rule 1110.2 takes effect right now, this  
22 coming July, is going to make it virtually impossible  
23 for us to continue burning as on-site. And we may have  
24 to shut down our engines or try to put it into a  
25 pipeline, but now we can't do that because of the bans.

1 And now, if you impose this moratorium, it's going to  
2 further put an imposition on how can we manage this  
3 biomethane beneficially. By putting it into a  
4 pipeline, you can get a ten-fold reduction in the  
5 criteria pollutant emissions by burning that gas at a  
6 combined cycle natural gas plant, rather than on-site  
7 in engines and turbines. And you get about a 30  
8 percent decrease in greenhouse gas emissions by taking  
9 that same gas you were burning on-site and putting it  
10 into a more efficient combined cycle natural gas plant.

11 We did submit a letter really focusing on two  
12 issues, don't impose a moratorium that affects  
13 California development of biomethane; that is  
14 absolutely the wrong message you need to send.  
15 Whatever you need to do to adjust it, don't impact the  
16 in-state California biomethane industry that is just  
17 trying to get developed. We've got huge hurdles that  
18 other people have mentioned, we've got a CPUC  
19 prohibition on pipeline gas, we'd like to get that  
20 lifted. If you put a moratorium on today, you're going  
21 to basically shut down in-state biomethane development,  
22 which takes 18 to 24 months to develop, and all those  
23 projects that we're looking at are going to go away.  
24 It's going to just shut down anything we want to do in-  
25 state. And we're only using one-half of our landfill

1 biomethane beneficially right now in California, we'd  
2 like to develop more, but California just last  
3 legislative session put a 75 percent goal of diverting  
4 waste from landfills. One of the ways you divert waste  
5 from landfills is organic waste that can be put into  
6 anaerobic digesters to produce methane, but now we  
7 won't have a place to be able to ship that biomethane  
8 except use it on-site. And this is your sister agency,  
9 well, sister department, the Resources Agency, that is  
10 going to be implementing this diversion, focusing on  
11 organic waste from landfills.

12           So we would just ask you to really consider,  
13 don't impose a moratorium that affects the in-state  
14 development of biomethane, it sends the wrong message  
15 at the wrong time, and we're trying to get this nascent  
16 industry developed here in California.

17           Our second point we put in our letter --

18           CHAIRMAN WEISENMILLER: Actually, you have to  
19 wrap up now.

20           MR. WHITE: Yes -- is a glide path --  
21 existing out-of-state projects, we'd like to have some  
22 kind of glide path to allow them to be continued. I  
23 think Tim Tutt suggested allowing existing contracts,  
24 we'd like to see those being able to be continued in  
25 development. And then, finally, the last point is the

1 applicability, it was really unclear in the resolution  
2 you're proposing on how it would affect dedicated  
3 pipelines and on-site use of biogas or biomethane.  
4 Your, I think, attorney clarified that; we would like  
5 to see a provision clearly expressly stating that in  
6 the moratorium, which we hope you don't adopt, but if  
7 you do, make sure it doesn't affect these other sources  
8 of biogas, which we'd like to be able to continue, but  
9 we'd also like to be able to develop in-state resources  
10 for pipeline distribution. Thank you.

11 COMMISSIONER PETERMAN: Thank you. I will  
12 add, too, that we've silenced the noise of the buzzer,  
13 but we will be trying to keep track of time. And then  
14 I'll ask this question, as well, I'm sure we will have  
15 some producers of biogas giving public comment, and so  
16 I will ask in this question, but one of the issues that  
17 has come up as part of this process is what it means to  
18 have gas flowing from a biogas site, and I don't know  
19 if you can speak to this, about how challenging is it  
20 once you've identified a site, to then have the biogas  
21 flowing into the pipeline?

22 MR. WHITE: Well, if you go on to U.S. EPA's  
23 LMOP, which is the Landfill Methane Outreach Program,  
24 they've got over 500 projects nationwide, tracking the  
25 beneficial development of landfill gas. Only 26 of



1 those projects are high Btu pipeline projects. The  
2 vast majority of projects have always been on-site  
3 development of power, or nearby dedicated pipelines to  
4 adjacent industries. It's really not been much  
5 development in high Btu gas, it is very expensive to  
6 treat landfill gas to meet gas quality standards. Most  
7 states, however, in fact, all of them except  
8 California, do allow you to put it into a pipeline if  
9 you're able to clean the gas up to meet pipeline gas  
10 quality standards. As far as I know, California is the  
11 only state, for a whole variety of reasons, too much to  
12 go into now, that has decided that, you know, we don't  
13 want to allow landfill gas. That is the easiest, that  
14 is the lowest hanging fruit right now for biomethane,  
15 but with the diversion of waste from landfills, which  
16 is the State policy of California, we need to find ways  
17 to attract waste to be diverted from landfills, and one  
18 way to do that it is to produce a product from that  
19 diverted waste that people want. We thought biomethane  
20 is something that the people of the State of California  
21 would want from diverted waste from landfills, but if  
22 you adopt this moratorium, you're basically saying, no,  
23 it's not important enough. You're sending the wrong  
24 message at exactly the same time that other branches of  
25 the State of California are saying we want to divert

1 more organic waste, we want to make it into useful  
2 products such as biomethane. So there's mixed messages  
3 going on here and it is just very difficult to find the  
4 investors, certainly the money managers in Houston for  
5 waste management are going to look at this, "Why in the  
6 world would we want to develop a biomethane project in  
7 California with these kinds of messages going on? We'd  
8 rather use our capital someplace else that we think we  
9 can get a higher return on investment."

10 COMMISSIONER PETERMAN: Thank you very much.  
11 Anyone else have any comments or questions? Thank you.

12 CHAIRMAN WEISENMILLER: Okay, Jon  
13 Constantino.

14 MR. CONSTANTINO: Good morning. Jon  
15 Constantino with the Coalition for Renewable Natural  
16 Gas, and thank you for meeting with me earlier in the  
17 week and I appreciate the opportunity to talk about a  
18 couple issues. And there's been a lot of discussion  
19 today about what it would do to the existing processes  
20 and projects that are in place, so I'm not going to  
21 discuss that, and we also submitted written comments  
22 which discuss what the legal policy and process, why we  
23 think there should not be action today. But I'll limit  
24 my testimony to discussing, you know, taking the next  
25 step, what happens if we do adopt a moratorium today.

1 We all know that's not the end of the process. The  
2 end of the process is we need legislative clarification  
3 on some of these issues that have been brought up, and  
4 we think we have answers to those questions, but if you  
5 kind of walk through what happens, we're going to have  
6 a suspension, we're going to have a new RPS Eligibility  
7 Guideline which doesn't change the eligibility, we have  
8 legislation pending; if that legislation passes, we'll  
9 have a need for another RPS Guidebook provision, and  
10 all that uncertainty, all that sort of layers of levels  
11 of things happening, maybe possibly litigation if folks  
12 who have millions of dollars invested in projects,  
13 which in 10 days went from being viable to not viable,  
14 that's a lot of uncertainty, that's a lot of activity  
15 to put on one industry at one time, that is moving  
16 forward.

17 As Kate's presentation showed, and I think it  
18 shows correctly, that when this process started to now,  
19 there's a ramp-up of projects; it takes a while to get  
20 here. And starting from 2004 to 2007 to now, we are  
21 two, four, six -- 16 projects -- we're just now getting  
22 this industry, which is low carbon. Obviously, we have  
23 to ensure that it's verified and there's mechanisms to  
24 do that, but we're just getting to the point where it's  
25 getting on its feet, and to take this action today

1 would send not only the wrong message, but would  
2 severely undercut the direction and capital and  
3 everything that is flowing into this market, which, as  
4 has been stated, is a policy decision state to produce  
5 low carbon and renewable fuels. And so our request is  
6 that we don't act today, we defer to the Legislature.  
7 We know there's Legislators on both sides of this  
8 issue. We know there are stakeholders here today and  
9 who aren't here today who would actively participate in  
10 legislation, even urgency legislation, to get this  
11 resolved as soon as we can. And we know the  
12 Administration also wants to see this clarified, so  
13 between the CEC wanting to get it clarified,  
14 stakeholders, the Legislators, I think we could not act  
15 today and still have a resolution in a very short  
16 period of time. And I guess that would be the ask, is  
17 to not send that signal out to the marketplace today.  
18 And --

19 CHAIRMAN WEISENMILLER: Okay, thank you.

20 MR. CONSTANTINO: -- I guess that's it.

21 Yeah, thank you.

22 COMMISSIONER PETERMAN: A couple questions,  
23 but first is there any -- are there representatives  
24 from your client here who would also be giving public  
25 comment?

1 MR. CONSTANTINO: Yes.

2 COMMISSIONER PETERMAN: Okay, because I have  
3 some technical questions about the biogas resource, but  
4 I'll save them for them. I'll ask you a couple  
5 questions, then, and if you want to defer to one of  
6 their comments, that's fine. In terms of the coalition  
7 that you represent, so just so we're clear, these are  
8 biogas producers?

9 MR. CONSTANTINO: Yes.

10 COMMISSIONER PETERMAN: Okay. How much of  
11 the gas, the biomethane that they're producing, what  
12 share of that is being sold to California for its RPS  
13 relative to other states or for other programs?

14 MR. CONSTANTINO: I don't have the exact  
15 numbers, I can get those to you, but a majority of the  
16 gas is coming to California.

17 COMMISSIONER PETERMAN: Okay. Is some of  
18 that gas being used for transportation purposes?

19 MR. CONSTANTINO: I'm not sure.

20 COMMISSIONER PETERMAN: Okay, your client can  
21 speak to that. And in some of your comments, you've  
22 mentioned maybe in person, or your filed comments,  
23 contracts that have been executed to sell biogas into  
24 the California market. Can you speak to how many  
25 contracts were signed and executed since the notice was

1 released 10 days prior?

2 MR. CONSTANTINO: How many have been executed

3 since --

4 COMMISSIONER PETERMAN: Signed -- yes.

5 MR. CONSTANTINO: In 10 days, I don't know of

6 any that have been signed in the last 10 days.

7 COMMISSIONER PETERMAN: Okay. Thanks, that's

8 all. I appreciate it.

9 COMMISSIONER PETERMAN: Yeah, I wouldn't mind

10 if your client can go next just so we can continue with

11 some of these questions. See whose card that is --

12 someone from the Coalition for Renewable Gas -- Natural

13 Gas? Are they present? If they're not in the room,

14 then we can do it later, that's fine.

15 CHAIRMAN WEISENMILLER: If not, then let's go

16 on to Melissa Cortez-Roth from --

17 COMMISSIONER DOUGLAS: All right, we'll give

18 the gentleman a minute to stand up.

19 MR. CAMPBELL: Sorry, Commissioner, I was

20 trying to find out how many cubic feet we deliver per

21 day in case you asked that question.

22 COMMISSIONER PETERMAN: But you know what,

23 you can come back with that information, that would be

24 terrific.

25 MR. CAMPBELL: Okay.

1                   CHAIRMAN WEISENMILLER:   Okay.

2                   MR. CAMPBELL:   What would you like me to

3   answer?

4                   COMMISSIONER PETERMAN:   Well, I guess give

5   your comments, but the specific questions I have, and

6   if you want to take a second to see if you can find

7   that information --

8                   CHAIRMAN WEISENMILLER:   Will you start by

9   identifying yourself for the record?

10                  MR. CAMPBELL:   Absolutely.   My name is Todd

11   Campbell, I'm the Vice President for Public Policy and

12   Regulatory Affairs for Clean Energy and our subsidiary,

13   Clean Energy Renewable Fuels.

14                  COMMISSIONER PETERMAN:   And my general

15   questions pertain to how much biomethane you are

16   currently, or have contracted currently, to sell to the

17   California market and in terms of the overall

18   biomethane production in sales that your member

19   companies are doing, how much of that is dedicated to

20   the California RPS Program, or intended for this

21   market?

22                  MR. CAMPBELL:   Okay.   Just to answer your

23   first question, we're primarily a transportation fuel

24   provider.   We primarily fuel natural gas vehicles --

25                  COMMISSIONER PETERMAN:   Is that your company

1 or the coalition?

2 MR. CAMPBELL: Clean Energy Renewable Fuels.

3 COMMISSIONER PETERMAN: Okay.

4 MR. CAMPBELL: And so, in terms of production  
5 for McCommas, we produce about 40,000 gasoline gallons  
6 per day, that's the number I know -- I was trying to  
7 get you the other number for cubic feet. But primarily  
8 about, I think about 60 to 70 percent of that is being  
9 delivered to SMUD right now. Our goal, our dream, is  
10 ultimately to get to the Low Carbon Fuel Standard, if  
11 we can get that out of the court system and be able to  
12 support that program. But up to now, we've used the  
13 Renewable Portfolio Standard to be able to gear up and  
14 be able to deliver our product to our customers, our  
15 core customers in the transportation sector.

16 COMMISSIONER PETERMAN: Thank you. Is there  
17 anyone from the Coalition of Renewable Natural Gas that  
18 is in the production of biomethane for electricity  
19 purposes here?

20 MR. CAMPBELL: The other thing I was going to  
21 say is we have another project in Michigan, in  
22 coordination with Republic, that delivers about -- I  
23 don't know if -- it's probably about 10,000 or 20,000  
24 gasoline gallons per day, but those are our two main  
25 projects.



1                   COMMISSIONER PETERMAN: Mr. Campbell, you  
2 can either take the opportunity now to give additional  
3 comments, or you can come back, as you wish.

4                   MR. CAMPBELL: Can I comment right now?

5                   COMMISSIONER PETERMAN: Sure, we can start  
6 your clock when you start talking.

7                   MR. CAMPBELL: Great. So, Commissioners,  
8 thank you. Over the past two years, our company, whose  
9 core business is fueling natural gas vehicles, has made  
10 an enormous investment of resources and capital into  
11 building two biomethane production facilities that have  
12 signed contracts to sell biomethane to California  
13 buyers. These contracts are indispensable to the  
14 project's viability and both may be severely and  
15 negatively impacted by the proposed Commission's  
16 suspension.

17                   There have been a lot of talk whether  
18 projects like ours support the state's goals with the  
19 RPS Program, but here are some facts: \$95 million.  
20 That is how much our company has raised or committed to  
21 spend on biomethane projects that will directly be  
22 impacted by the Proposed Suspension. Millions of  
23 dollars have been spent on manufactured goods produced  
24 right here in California for our projects, 200,000  
25 metric tons, and that's the estimated annual reduction

1 in greenhouse gas emissions that we will achieve once  
2 our plants are full at capacity, solely via a  
3 displacement of fossil fuel natural gas; 250,000 metric  
4 tons, that's the estimated greenhouse gas emission  
5 reductions achieved during 2011 from capture of  
6 migratory methane at our project in Texas, made  
7 possible solely by our multi-million dollar investment  
8 in landfill gas collection systems, which has resulted  
9 in a quintupling of biomethane produced by the facility  
10 since our acquisition: 1) that's the number of low  
11 carbon fuels that can be used for an 18-wheeler and  
12 provide up to 90 percent reduction in greenhouse gasses  
13 today. That fuel is biomethane.

14 All of the successes we've had over the past  
15 three years of building a renewable energy business  
16 here in California is largely attributable to our  
17 participation in the California RPS Program. While we  
18 plan to provide the majority of our fuel to the vehicle  
19 fuel market, the stability and long term incentives of  
20 the California RPS Program have been indispensable to  
21 building financially viable production facilities. As  
22 a California-based company that strongly support AB 32,  
23 the Low Carbon Fuel Standard, the No on Prop. 23  
24 Campaign, and the 33 percent goal of the RPS, we urge  
25 the Commission not to shut the door on our industry and

1 help us break the barriers that we currently face to  
2 facilitate in-state production of biomethane. We  
3 believe that capturing methane from organic waste and  
4 turning it into a multi-use energy resource is one of  
5 the single greatest near term opportunities we have in  
6 building more sustainable communities and reducing  
7 greenhouse gasses. We are very surprised that the  
8 Energy Commission would, through this action risk  
9 destroying what we have worked so hard on building  
10 under this existing rule. We propose a reasonable  
11 transitioned approach in our written comments. We urge  
12 you to support that approach today. At a bare minimum,  
13 please postpone this decision until a more thorough and  
14 independent analysis can be done on the impact of  
15 biomethane on the California RPS Program. If a  
16 suspension is truly necessary, then the suspension  
17 should not apply to any contract signed before today.  
18 Let's all have an opportunity to see just how  
19 significant the volume of biomethane that is contracted  
20 for under existing contracts, rather than speculating  
21 or debating. The Energy Commission and the Legislature  
22 have multiple near-time opportunities to act to ensure  
23 additionality and verification of all biomethane that  
24 is used for RPS compliance; taking an action that will  
25 wipe out millions of dollars in investment, cost

1 California jobs, and set back the RPS without adequate  
2 information is completely problematic for us.

3           And I just want to say on a personal note, as  
4 a former Mayor of Burbank who adopted that 33 percent  
5 Renewable Portfolio Standard when we didn't have to,  
6 and perhaps more significantly had cut off the  
7 Intermountain Power Project that provides 50 percent of  
8 our power from coal sources, this is a critical  
9 renewable that we use to help us achieve these goals,  
10 it's something that really surprises me as a former  
11 government official, that suddenly it seems like it  
12 might be a bad word.

13           The other thing is that is discouraging for  
14 me on the suspension is now, on the business side,  
15 companies that have done and gone the extra mile to  
16 support the very goals that California sets, you know,  
17 AB 32, LCFS, RPS, I mean, we were there for the RPS  
18 change. To find that suddenly we're not able to, or  
19 possibly we may not be able to qualify is discouraging.  
20 And also this company, Clean Energy, stood up with  
21 member Fuentes to try to promote in-state biomethane  
22 production two years ago with an Assembly Bill that  
23 unfortunately did not succeed. So we are an industry  
24 that is very nascent, at your mercy, and really need  
25 your help to find a way to deliver these renewables,

1 make sure the industry is healthy, and find a way to  
2 get into the California market -- we desperately want  
3 to -- we're a California-based company. In fact, 90  
4 percent of our employees for our biomethane projects  
5 are based here in California. All the engineers, the  
6 designers, the traders, everybody, are based in Seal  
7 Beach. And all our architectural firms are all based  
8 in California. So with that, I think it's extremely  
9 reasonable to ask the Commission, if anything, if we're  
10 going to have a suspense, or if you're going to put a  
11 suspension --

12 COMMISSIONER PETERMAN: I'm going to have to  
13 ask you to wrap up, we're blinking here.

14 MR. CAMPBELL: -- we would ask that all  
15 current contracts and pre-certified contracts be  
16 allowed to move forward. The Sock Hills Trail Project  
17 that we've done, we've done this two years ago, so a  
18 project that started two years ago, and what Chuck  
19 White has mentioned with regards to how many projects  
20 are out there? He's right. Only 26 out of 500  
21 identified. It's very hard to make sure that there's a  
22 facility, a landfill facility that has a connection to  
23 the pipeline system, most of the time they don't have  
24 that and you have to work with the utilities and spend  
25 maybe \$2, \$4, \$6 million just to get a pipeline

1 extension to the facility. That takes a lot of time,  
2 a lot of negotiating time, you can't just turn these  
3 projects on. So the argument that there's a big Gold  
4 Rush, I'm really telling you, that is not true. And  
5 what I would further impress upon you is, don't harm  
6 the companies that support you day in and day out for  
7 years, want to help you succeed -- we're one of them.  
8 We're begging for you to help us.

9 CHAIRMAN WEISENMILLER: Okay, thank you.

10 COMMISSIONER PETERMAN: Well, first, I  
11 appreciate you wanting us to succeed --

12 MR. CAMPBELL: Always.

13 COMMISSIONER PETERMAN: Second, I have heard  
14 that there can be a time disconnect between the signing  
15 and execution of a contract and the actual injection of  
16 the gas into the pipeline, or delivery, or when the gas  
17 could start flowing. Can you speak to the reason for  
18 that disconnect?

19 MR. CAMPBELL: Sure. I mean, you have to go  
20 through certain proofs for a utility to want to even  
21 consider your project. You have to show that you have  
22 the ability to deliver gas to their system. You have  
23 to be able to ensure that you're going to be able to  
24 meet a contract by the certain gas that you say in your  
25 contract that you're going to be able to deliver on a

1 daily basis. Furthermore, you want to make sure that,  
2 before you enter into a contract, that you actually  
3 have a project that works. I mean, we look at projects  
4 all over the country, we've looked at a number -- we  
5 have two. And the reason being for that is sometimes  
6 people estimate that biogas production from a certain  
7 landfill, for example one in Virginia that we were  
8 looking at, doesn't have it, it does not pan out  
9 economically and therefore you have to turn those types  
10 of applications down.

11 COMMISSIONER PETERMAN: So are there some  
12 situations in your projects where, for a new project,  
13 you are then diverting gas that was being utilized for  
14 a different reason for a new project, or a new contract  
15 with the utility?

16 MR. CAMPBELL: No. If we don't, for example,  
17 if the pipe blows in another direction and we can't get  
18 that gas, we get penalized. You know, the gas has to  
19 flow in the right direction, or if the pipeline goes  
20 down, we don't get paid, I mean, we get docked. And we  
21 don't deliver at any other location.

22 COMMISSIONER PETERMAN: So then, with the  
23 projects you -- the gas you're selling to California,  
24 is it all flowing through pipelines that are flowing in  
25 the direction of California?

1           MR. CAMPBELL: We have -- we purchase  
2 through intermediaries, contracts to flow that gas to  
3 California. So we can show per any kind of guideline  
4 how we get from A to B. And, for example, if we're --  
5 you know, I'm the policy hack on this, okay, so --

6           COMMISSIONER PETERMAN: Fair enough.

7           MR. CAMPBELL: -- so don't take me for  
8 gospel, but we've turned down a number of projects that  
9 we cannot prove that we can get to California.

10          COMMISSIONER PETERMAN: Okay --

11          MR. CAMPBELL: We also have, remember, we are  
12 a natural gas transportation fueling company that wants  
13 to get into the Low Carbon Fuel Standard, and in order  
14 to do that, I have to show -- I have to demonstrate to  
15 the Air Resources Board and under the RPS to the Energy  
16 Commission, how I get that gas to California. And  
17 we've turned down good projects to do that.

18          COMMISSIONER PETERMAN: So you do believe  
19 there's physical delivery of the biogas that you are  
20 selling to California utilities to those facilities?

21          MR. CAMPBELL: As best as one can in a world  
22 of molecules and electrons, I mean, you know, we've  
23 operated under the same premises the industry has, we  
24 sell our gas under contract, we pay for the actual  
25 transfer of that gas for delivery, and that's industry



1 standard practice.

2 COMMISSIONER PETERMAN: So there's a  
3 financial and contractual pathway, but not necessarily  
4 a physical?

5 MR. CAMPBELL: It's possible -- it's not  
6 impossible.

7 COMMISSIONER PETERMAN: Okay.

8 MR. CAMPBELL: But, you know, if you're going  
9 to say I have 100 percent control over a molecule, I do  
10 not. I just -- I wish I had because we wouldn't be  
11 here, for one, Commissioner. But I think the important  
12 thing here is that we're being able to create the  
13 technology necessary to get to the digesters, to  
14 develop the biomethane industry here in the State of  
15 California, and we certainly would like to work with  
16 this agency and other Legislators to make sure that in-  
17 state biomethane production can happen, and this is the  
18 industry that is making it happen.

19 COMMISSIONER PETERMAN: Okay --

20 MR. CAMPBELL: If you take us out, and  
21 especially if you take out dairy in the State of  
22 California, and other Ag products, that's a major  
23 problem for us. Major problem for us. And there's --  
24 think of it from an investor's standpoint, if suddenly  
25 California decides they're going to suspend the rules

1 today, who in their right mind on Wall Street is going  
2 to invest in California? Who is going to invest in  
3 biomethane projects? Or, when we pick it up again in  
4 four to six months, someone is going to say, "You know  
5 what? They suspended us six months ago, but we're  
6 going to try it." They don't do that. It took a lot  
7 of time, a lot of care, to convince someone to actually  
8 invest in a company, even like Clean Energy Renewable  
9 Fuels, where you had the Board of Directors decide this  
10 is the right thing to do, "Let's help California out.  
11 Let's not just be number two, let's be number one in  
12 this industry. And let's hopefully get to the  
13 Sanitation plants and the Ag-based facilities." We  
14 have two equipment manufacturers, a subsidiary, IMW in  
15 North Star, that work on trying to create patents,  
16 equipment to accelerate the ability to harness  
17 biomethane from smaller amounts of waste --

18 COMMISSIONER PETERMAN: Yeah, so I'll clarify  
19 that the suspension that we're considering today  
20 pertains only to the RPS and not to the use of  
21 biomethane for any other program in the State, or the  
22 State. And one final question for you --

23 MR. CAMPBELL: Well, can I build on that,  
24 though? Can I --

25 COMMISSIONER PETERMAN: Are you willing to

1 share with the Energy Commission all your contracts  
2 related to biomethane as we have questions we're trying  
3 to further understand and investigate this issue?

4 MR. CAMPBELL: Well, Commissioner, let me  
5 just say that, first, we wish there was Low Carbon Fuel  
6 Standards in the Court System, so unfortunately, we're  
7 not able to really use that vehicle to support our  
8 biomethane, so it's not really true that there are  
9 other options, per se, for us. Second, in terms of  
10 sharing contracts, I'm more than happy to share  
11 whatever we have permitted that my clients also are  
12 willing to do that. I mean, and I think that, you  
13 know, I'm speaking out of turn here, but we're not  
14 trying to hide the ball here. What we're trying to do  
15 is help an industry that produces 90 percent lower  
16 carbon emissions, and is otherwise flared and combusted  
17 and creates air pollution, into something that is  
18 positive and productive. So, you know, we want -- and  
19 we also made it very clear, you know, the big  
20 frustrating thing for us is, we've been meeting for  
21 five or six months now, we've been at the table with  
22 the people that are concerned about this, we're not the  
23 roadblocks, we're happy to look at a suspension, if not  
24 a moratorium later on in the process, and we would like  
25 to have a glide path that preserves our investments,

1 that would be fair. And hopefully we'll prevail on  
2 the Low Carbon Fuel Standard, but to be able to just  
3 cut us off, for example, our project in Michigan which  
4 we've been doing for over two years now, is very unfair  
5 to us.

6 COMMISSIONER PETERMAN: Well, thank you for  
7 your comments. Appreciate it.

8 MR. CAMPBELL: Thank you, Commissioner.

9 CHAIRMAN WEISENMILLER: Actually, I guess  
10 there's another member of his coalition here, Landfill  
11 Energy Systems, it looks like Jay Hopper.

12 MR. HOPPER: Thank you. My name is Jay  
13 Hopper, I'm with Landfill Energy Systems. We have an  
14 office in Temecula, California.

15 COMMISSIONER PETERMAN: Mr. Hopper, would you  
16 speak more into the mic? I'm sorry. I can barely hear  
17 you, so I'm not sure everyone on the Webcast can.

18 MR. HOPPER: Is that better?

19 COMMISSIONER PETERMAN: Yes, please. Thank  
20 you.

21 MR. HOPPER: Thanks. Landfill Energy Systems  
22 develops energy projects on landfills in 15 states.  
23 We've been doing that for 30 years, we are the oldest,  
24 and I know we're the largest, other than Waste  
25 Management owns the landfills, we have projects on

1 Republic Landfills, Waste Connections, Waste  
2 Management, all the majors, and a lot of landfills that  
3 are located on County Landfills, which are the  
4 predominant ones across the country. We do all three  
5 types of projects, we do electric on-site, we do medium  
6 Btu where we pipe it to a customer's boilers, and we  
7 have two IBTU projects in the U.S.

8 I just wanted to talk -- a couple things, one  
9 is the length of time it takes to do any of these  
10 projects, there's the time it takes to negotiate with  
11 the County, which is generally years, we're just  
12 completing three years of negotiations with the county  
13 in Ohio for a project that we're going to build, then  
14 at six months to 12 months to order equipment, then  
15 it's about 18 months to build the project, and I'm  
16 ignoring in that financing and all the other things  
17 that go around that. So we negotiated a contract with  
18 SMUD in 2010 to sell them IBTU gas, they didn't want to  
19 take delivery until January 1, 2014, which is when the  
20 gas will start to flow. We've been moving for three  
21 years on following up on that commitment.

22 One of the things that I'd like to mention is  
23 the complexity of when you do a IBTU project vs.  
24 another project. In each project, we look at what's  
25 best for the facility, and in order to do an IBTU

1 project, you have to have a certain amount of gas. We  
2 have one of the smaller ones in the country at Oklahoma  
3 City at about 2,000 SCFM of landfill gas. Anything  
4 less than that is pretty uneconomical, so you look for  
5 a landfill that's bigger than that. You also have to  
6 have a location that can interconnect to a pipeline  
7 fairly easily. You can't afford to build a lot of  
8 miles of pipeline to get to a pipeline to interconnect  
9 to. And then you have to deal with the pipeline, which  
10 is always concerned about the quality of the gas and  
11 the fact that it has to 100 percent comply with their  
12 specs, so when you're dealing with a pipeline that's  
13 never taken landfill gas before, they're very concerned  
14 that you're going to have one mistake, and they can't  
15 afford one mistake. So, in our case, we show them  
16 years of data from our other projects, to show that  
17 there's never a mistake, and that the system works.  
18 But that process, and one project in Pennsylvania,  
19 which is going to Connecticut, that project took over  
20 five years to get the pipeline to approve the  
21 interconnect. So there are a number of things that  
22 take years and years in order to get these projects, so  
23 the 10-day moratorium is not a Gold Rush at all, "Let's  
24 do five projects and get that under the deadline," it  
25 doesn't work that way. And these projects are tens of

1 millions of dollars.

2 COMMISSIONER PETERMAN: Thank you for that,  
3 just a couple questions. First of all, thank you for  
4 being here and appreciate your comments. I especially  
5 appreciated your discussion of some of the reasons why  
6 it takes a long time to develop a project. So I think  
7 you've heard today, then in the comments that have been  
8 filed, there have been some requests for us to  
9 grandfather contracts that have been executed or signed  
10 by the end of today, into the certification process.  
11 But it seemed to me, based on what you said, that there  
12 can be a long time between signing and executing those  
13 contracts, and having them actually provide power to  
14 the State of California.

15 MR. HOPPER: Yes, there can be.

16 COMMISSIONER PETERMAN: And there can be.  
17 And there can also be a fair bit of uncertainty between  
18 the contract signing and that ability to deliver that  
19 power. Or you mentioned other factors that come into  
20 play, perhaps.

21 MR. HOPPER: It's the chicken and egg, you  
22 have to have the contract in order to do the financing  
23 to build the project.

24 COMMISSIONER PETERMAN: Okay, so the contract  
25 comes before the financing and the interconnection and

1 all those other things?

2 MR. HOPPER: Correct.

3 COMMISSIONER PETERMAN: So it's an early  
4 stage action. Okay. Thank you, I appreciate that.

5 CHAIRMAN WEISENMILLER: Thanks. Charles  
6 Helget, Republic Service.

7 MR. HELGET: Members of the Commission, I'm  
8 Chuck Helget. I represent Republic Services, Inc. And  
9 Republic Services appreciates this opportunity to  
10 provide comments on the Renewable Portfolio Standard  
11 proceedings and the proposal to suspend the RPS  
12 eligibility for biomethane. While we understand the  
13 need to update the RPS Guidelines for biomethane,  
14 particularly since the passage of A.B. X12, we believe  
15 it is very important for the CEC to understand also the  
16 full breadth of the magnitude of the consequences of  
17 taking short term actions that will negatively impact  
18 legitimate and quality biomethane projects that are  
19 currently being developed under the RPS guidelines  
20 established by the Commission.

21 Republic is a leader in renewable energy from  
22 landfill gas generated at our landfills. Republic has  
23 developed a multi-pronged landfill gas strategy that  
24 will result in the conversion of many of our landfills  
25 from a system of landfill gas flaring to one of



1 renewable energy production, primarily due to  
2 California's RPS. A key component of the strategy  
3 focuses on high Btu projects that will remove landfill  
4 gas from flares, treat landfill gas to pipeline  
5 standards, and injection biomethane in to the natural  
6 gas pipeline system for us as renewable fuel. While  
7 most of these projects are in other states, we would  
8 actively pursue similar projects at our California  
9 landfills if impediments to pipeline injection were  
10 removed. Our experience with biomethane projects in  
11 other states will, in fact, allow Republic Services to  
12 be more prepared and to more rapidly pursue biomethane  
13 projects at our California landfills, should those  
14 impediments to pipeline injection be removed.

15           As we have often pointed out, California's  
16 RPS policies have been a prime motivation for the  
17 development of these renewable energy projects. The  
18 existing determinations and rulings by the CEC have  
19 enabled biomethane producers to achieve a level of  
20 success over the past few years that is unprecedented.  
21 The Proposed Suspension of biomethane eligibility will  
22 in effect freeze biomethane development nationally and  
23 will most likely help the development of many of our  
24 projects that have contracts in place, and tens of  
25 millions of dollars invested. Republic has seven

1 projects that are in advanced stages of development,  
2 many of those projects will be delivering biomethane to  
3 the natural gas pipeline before the end of this year,  
4 and more in 2013. These projects will not be RPS  
5 eligible under the proposed moratorium, simply because  
6 they will not be delivering gas on the date that the  
7 moratorium is approved by the Commission.

8           A case in point is Republic's Sock Trail  
9 project in Michigan. The project is additional. Will  
10 it redirect methane that is currently flared or  
11 planning to be flared, records and documentation of gas  
12 flow will be maintained, and there will be no double-  
13 counting. The project has been developed over the past  
14 two years. Contracts were signed in November of 2010,  
15 and we have invested, along with our developer, over \$2  
16 million in infrastructure, permitting, and associated  
17 fees. This project will be injecting gas into the  
18 pipeline in June and July of 2012, but will not move  
19 forward under the proposed moratorium. What we'll be  
20 left with is likely a legal tangle as we try to unwind  
21 contracts.

22           Further, this Sock Trail project is the type  
23 of project that --

24           CHAIRMAN WEISENMILLER: Could you wrap it up  
25 now?

1           MR. HELGET:  -- our long term strategy.  
2   Therefore we would request that the CEC reconsider the  
3   specified conditions of suspension and modify these  
4   conditions so as to allow projects that have contracted  
5   or are under construction to proceed under the current  
6   RPS Rules.

7           COMMISSIONER PETERMAN:  Thank you.  
8   Appreciate your comments.  I was going to ask you a  
9   couple questions about double-counting, additionality,  
10  but you touched on those already.  You mentioned one of  
11  the seven projects has a gas delivery, or injection  
12  date, of June/July of 2012.  What about the other six?

13          MR. HELGET:  Because of the -- again, I need  
14  to plead the fact that I'm a policy flack, instead of a  
15  technical guy --

16          COMMISSIONER PETERMAN:  Fair enough.

17          MR. HELGET:  -- but those projects, again,  
18  are in various stages of development, so it's very hard  
19  to predict exact dates of when and if they will even be  
20  producing gasoline, or producing biomethane.

21          COMMISSIONER PETERMAN:  Okay.

22          MR. HELGET:  We have, I think, at least one  
23  or two that would be producing gas into the pipeline  
24  before the end of the year, other than the Sock Trail,  
25  and some early in 2013.

1                   COMMISSIONER PETERMAN:   Okay.   And I'm sure  
2   you're aware that one of the reasons, I believe, for  
3   the Hayden Act in California was concerns about vinyl  
4   chloride.   Can you speak to your landfill projects  
5   nationwide about, 1) do you see this as a concern?   And  
6   2) do you do anything to treat it before you inject it  
7   into the pipeline for expected delivery to California?

8                   MR. HELGET:   One of the complications of  
9   doing these types of projects nationally is the fact  
10   that we do have to treat the gas to pipeline standards,  
11   and of course vinyl chloride is one of the major  
12   concerns nationally.   We have not found that to be a  
13   major issue, we can treat it to pipeline standards,  
14   vinyl chloride typically, but each landfill is  
15   different because the type of waste that have gone into  
16   that landfill are different, and so each project  
17   requires you do a different analysis and perhaps do  
18   different types of treating.

19                  COMMISSIONER PETERMAN:   Okay, I'm just trying  
20   to get a sense of perhaps some of the environmental  
21   quality of particular gas from the different landfills.  
22   And then, finally, or as you wish, can you speak to the  
23   projects that you currently have -- and you mentioned  
24   that this proposed action would freeze biomethane  
25   development nationally, so kind of following up on that

1 comment of yours, to what extent are you currently  
2 selling your landfill gas to places outside of  
3 California?

4 MR. HELGET: Our landfill gas in California?

5 COMMISSIONER PETERMAN: Outside of  
6 California, or just generally, because you mentioned  
7 that this action would freeze nationally development,  
8 so I'm trying to get a sense of -- is it your  
9 perspective that all the biogas being developed in the  
10 nation is being directed to California?

11 MR. HELGET: Typically right now, our  
12 projects, landfill gas to energy projects nationally,  
13 we're generally generating power at the site with  
14 turbines or reciprocating engines. The project, the  
15 Sock Trail Project, is really our first project where  
16 we would be contemplating putting gas into the natural  
17 gas plant that's coming to California, presumably.

18 COMMISSIONER PETERMAN: Thank you.  
19 Appreciate it. While I have such an esteemed guest  
20 here, it's good to ask some of these technical  
21 questions, and we've gotten a lot of information from  
22 you already, but appreciate some of these  
23 clarifications for the record. Thank you.

24 MR. HELGET: You're welcome.

25 CHAIRMAN WEISENMILLER: Thanks. Okay, so

1 Melissa Cortez-Roth, California Wind Energy  
2 Association.

3 MS. CORTEZ-ROTH: Thank you. Melissa Cortez-  
4 Roth, I'm here today for the California Wind Energy  
5 Association. And CALWEA does support the suspension,  
6 the Proposed Suspension. We think that it will give  
7 the Legislature the time that it needs to apply the  
8 same scrutiny to out-of-state biomethane resources, as  
9 it did to out-of-state renewable generation when it  
10 adopted the 33 percent RPS.

11 Tremendous wind resources in neighboring  
12 states were largely put off limits in the California  
13 market under the new RPS Standards and those were for  
14 reasons that the wind industry understood and both  
15 supported, but we do believe that those same standards,  
16 in terms of verification and tracking and providing  
17 benefits to California should be applied to out-of-  
18 state biomethane resources so that in-state and  
19 directly interconnected projects are not competing  
20 against old landfill gas investments in places as far  
21 away as Oklahoma and Pennsylvania. So, again, we do  
22 support the suspension.

23 COMMISSIONER PETERMAN: Thank you. Just  
24 since you're an active player in the California  
25 renewable market, I'm just wondering what role do you

1 see for biomethane in the RPS? And do you see it as a  
2 resource that can help firm some of the wind generation  
3 that we're currently contracting for?

4 MS. CORTEZ-ROTH: You now, I'm really not  
5 prepared to answer those questions today. I would have  
6 to go back and talk with some of our membership before  
7 we can comment on some of those things. I apologize  
8 for that.

9 COMMISSIONER PETERMAN: Fair enough. Well, I  
10 look forward to your comments in the future on that.  
11 Thank you.

12 CHAIRMAN WEISENMILLER: Okay, I was going to  
13 -- Mike Carroll.

14 MR. CARROLL: Good afternoon. My name is  
15 Mike Carroll, I'm an attorney with Latham & Watkins,  
16 and I'm here on behalf of a coalition that is currently  
17 being formed, we were recently retained. The full  
18 membership of that coalition is yet to be determined,  
19 that effort is being coordinated by Element Markets.

20 We submitted extensive written comments last  
21 Friday. I realize that you haven't had a lot of time to  
22 review those -- good, good.

23 CHAIRMAN WEISENMILLER: You should assume  
24 we've read them, please.

25 MR. CARROLL: I assumed you had them and that

1 you'd looked at them. I realize that you haven't had  
2 a lot of time to process them, and obviously this isn't  
3 an ideal dialogue for resolving the sorts of issues  
4 that we raise here, although I've been very impressed  
5 with the questions and answers that have taken place  
6 today. I will say, while our clients share many of the  
7 concerns that have been expressed today, save for the  
8 last speaker, my perspective on this is somewhat  
9 different, and so while I don't necessarily expect my  
10 comments to be welcomed, perhaps by the staff, at least  
11 they'll represent a change of pace and ask that you  
12 accept them in that spirit.

13           We did identify at least six major legal  
14 defects in the staff proposal, and I'm just going to  
15 summarize those briefly. First, the Proposed  
16 Suspension, we believe, is beyond the scope of the  
17 Commission's jurisdiction. The Legislature very  
18 specifically set forth the criteria for eligible  
19 renewable resources in the Public Utilities Code, and  
20 charged the Commission with applying those criteria.  
21 The Proposed Suspension, we believe, impermissibly goes  
22 beyond applying the criteria established by the  
23 Legislature to actually altering those criteria, and  
24 therefore represents a usurpation of the role of the  
25 Legislature. Second, because we believe the Commission



1 is acting outside the scope of the authority granted  
2 to it by the Legislature, the otherwise applicable  
3 exemption from the Administrative Procedures Act, we  
4 don't believe, is applicable to the action as currently  
5 proposed. The Proposed Suspension, assuming it is  
6 authorized at all, amounts to a rulemaking and cannot  
7 be enacted until the EAP's requirements are met.  
8 Third, and related to that, we don't believe that the  
9 10-day notice provision found in Public Utilities Code  
10 Section 25747 applies to this particular action, and  
11 that the broader 30-day notice provision applies.  
12 Fourth, we believe the Proposed Suspension is a  
13 discretionary action subject to California  
14 Environmental Quality Act; fifth, we believe that the  
15 Proposed Suspension would result in discrimination  
16 against out-of-state biomass sellers in violation of  
17 the Dormant Commerce Clause. As we've heard today,  
18 there isn't really activity with the in-state  
19 generators, and therefore expanding it to cover in-  
20 state activity that is basically non-existent, we don't  
21 think, provides any coverage on Dormant Commerce Clause  
22 claim. Sixth, we think that the Commission's proposal  
23 is arbitrary and capricious in light of the record  
24 that's been created, including the comments that were  
25 provided today.

1           I'm not going to repeat -- in our written  
2   comments, we also identified many of the policy issues,  
3   I'm not going to repeat those here, I had intended to  
4   summarize those, but they've been already stated by  
5   others and in a more eloquent way than I can. I will  
6   simply conclude by stating that, you know, this isn't  
7   necessarily the forum to debate these issues, we hope  
8   that we don't end up in another forum where debate and  
9   resolution of these issues would be more appropriate,  
10  we think there is certainly a way to get there, you've  
11  heard many suggestions today along those lines. What  
12  we would ask is that you not take action today to  
13  suspend this, but to have further stakeholder dialogue  
14  because, as has been said, and we concur, we think that  
15  many if not all of the issues on both sides of this  
16  debate can be resolved through more carefully crafted  
17  proposal that addresses the concerns that have been  
18  expressed about biomethane, but at the same time  
19  protects the substantial interests that many of the  
20  companies in this room, including my clients, have made  
21  in an attempt to help California meet its renewable  
22  energy goals. Thank you very much.

23           COMMISSIONER PETERMAN: Thank you. And just  
24  for the record, can you say again who all your clients  
25  are that are interested in this matter?

1           MR. CARROLL: Yes, currently it would be  
2 Element Markets, LLC and some subsidiaries, wholly  
3 owned subsidiaries of Element Markets.

4           COMMISSIONER PETERMAN: Thank you. I have no  
5 further questions.

6           MR. CARROLL: Thank you.

7           CHAIRMAN WEISENMILLER: We're going to take  
8 one more comment, so that will take us to about 12:30,  
9 we'll then break for about an hour lunch, and come  
10 back. So Nick Lapis, Californians Against Waste.

11          MR. LAPIS: Good afternoon, Commissioners.  
12 Nick Lapis with Californians Against Waste. We're a  
13 34-year-old environmental organization focusing on  
14 waste reduction and recycling policy here in  
15 California. I'm going to keep my comments a little bit  
16 different than everybody else's, and I really want to  
17 focus on the standalone in-state anaerobic digestion  
18 projects, which are slightly different than the  
19 landfill projects.

20          On the out-of-state landfill projects, we  
21 understand your concern, there is some legitimacy to  
22 the issues being raised and the issues being raised are  
23 not insurmountable, but we do understand why you have  
24 those concerns. But on the in-state organic waste  
25 digestion projects, which we have been long supporters

1 of, as has this agency, as has this agency's sister  
2 agencies, none of these issues are inherently present.  
3 So staff identified three main criteria in S.B. X12  
4 that they're worried these projects would violate. The  
5 first one was in-state production. Again, if we're  
6 talking about in-state digester gas production, then  
7 the in-state part is clear. The second one was reduce  
8 air pollution. These projects divert food waste and  
9 other organic materials from landfills which are  
10 significant sources of non-methane organic compounds  
11 and other criteria pollutants. And in general, these  
12 projects are done as pollution reduction in the State  
13 of California, and that's why we support them, because  
14 they reduce pollution from landfills. And then the  
15 third criteria that was listed was greenhouse gas  
16 reduction. I think this is one where we not only get  
17 the direct greenhouse gas reduction of avoiding fossil  
18 fuel emissions, we get significant upstream and  
19 downstream benefits. According to the Climate Action  
20 Reserve, if we were to divert all of our currently  
21 landfilled food to digesters, we would avoid about  
22 three million tons a year of greenhouse gas emissions  
23 from landfills in California.

24 In addition to that, the California Air  
25 Resources Board has identified that the compost that's

1 produced from the digestate, if applied, will reduce  
2 about another 3.5 million tons in the Ag sector in  
3 California, so this is in addition to the avoided  
4 fossil emissions, we have three million in fugitive  
5 landfill emissions, and 3.5 million in Ag emissions.

6           Currently, 98 percent of food waste is  
7 landfilled in this country. The criteria pollutants  
8 and greenhouse gases being released in California are  
9 significant from the source and, unless we develop an  
10 infrastructure to handle these materials outside of  
11 landfills, we're talking about not only not getting  
12 these benefits, but having significant greenhouse gas  
13 and criteria pollutant emissions.

14           We look forward to talking with you and the  
15 Legislature on this issue, but as you're making this  
16 decision today, I would suggest you don't throw out the  
17 baby with the bathwater in terms of the in-state  
18 digesters; they don't have the same concerns that you  
19 have with out-of-state landfill gas injection projects.  
20 Thank you.

21           COMMISSIONER PETERMAN: Thank you. So you do  
22 see the suspension as proposed as having an impact on  
23 in-state, as well as out-of-state resources?

24           MR. LAPIS: I definitely believe that in-  
25 state digesters would be included. Right now, most of

1 the digestion industry seems to be going in the way of  
2 either on-site electricity generation, or producing low  
3 carbon fuels, or net metering.

4 COMMISSIONER PETERMAN: Okay.

5 MR. LAPIS: But there is a significant  
6 opportunity for digester gas to be injected and to be  
7 used at RPS eligible power plants in California.

8 COMMISSIONER PETERMAN: Thank you very much.

9 MR. LAPIS: Thank you.

10 CHAIRMAN WEISENMILLER: I'm going to correct  
11 my statement. I have one gentleman who can't be here  
12 this afternoon, so I was going to ask him to come forth  
13 now. Lenny Goldberg from TURN.

14 MR. GOLDBERG: Thank you very much for the  
15 consideration. I could not spend the afternoon. I'm  
16 speaking on behalf of the Utility Reform Network, which  
17 represents IOU ratepayers, small ratepayers,  
18 residential ratepayers, and we are in support of your  
19 moratorium of the suspension for a number of reasons.  
20 We have been very involved in the RPS considerations,  
21 the complexities of Bucket 1, Bucket 2, and Bucket 3,  
22 we are very focused on trying to provide the maximum  
23 amount as we discuss RPS of the deliverable resources  
24 to California that develop the renewable energy  
25 industry. We don't think that this is a small issue,

1 although I want to correct some references; people  
2 refer to opponents of biomethane, we are very strong  
3 supporters of the development of biomethane as part of  
4 the RPS, we think it has tremendous potential, all  
5 those reasons that were stated with regard to shaping  
6 the load for wind and other renewables, are all there  
7 for biomethane. That said, we opposed substantially  
8 the TREC proposals -- some of the TREC proposals and I  
9 want to make a parallel between what you're doing  
10 today, which is a positive one, and what was done at  
11 the Public Utilities Commission, in which the PUC said,  
12 you know, "we are going to suspend the signing of  
13 contracts for tradable renewable energy credits outside  
14 of the PUC." They put a moratorium and a suspension on  
15 that and then developed some criteria that followed  
16 along with S.B. 1X2.

17           There are issues, as has been stated by the  
18 staff, and we'll just repeat them, additionality, do we  
19 know what we're getting? There are issues of potential  
20 double-counting, there are issues of having standards  
21 -- many of the reasons that were provided in the staff  
22 report, that we care about, all of these apply to non-  
23 biomethane, they apply to wind, they apply to solar,  
24 they apply to questions of what falls in to what  
25 Bucket, and so we think the reason your decision was

1 appropriate is because there is not that kind of  
2 verification, there's not that kind of detail. We do  
3 have problems with understanding what is additional,  
4 what are the greenhouse gas contributions. I don't  
5 need to repeat your reasons for the suspension, but  
6 other than to say we support it and see a real parallel  
7 with what happened at the Public Utilities Commission  
8 when the TREC decision was held, there was a suspension  
9 of that. You are pretty much doing the same thing,  
10 until we can know what really is going on out there,  
11 and that will not discourage biomethane. I think it's  
12 very well understood that it's a valuable resource  
13 that's needed in the State of California.

14 COMMISSIONER PETERMAN: Thank you. Just a  
15 question you can answer as you wish. One of TURNS  
16 objectives, I believe, appropriate to say, is to keep  
17 electricity affordable for ratepayers, and the issue  
18 has been brought up today by various parties that this  
19 is a lower cost compliance option, or a resource  
20 available for the RPS. Can you speak to, acknowledging  
21 that there is that interest in keeping things  
22 affordable, why you're still in support of the  
23 suspension?

24 MR. GOLDBERG: We don't, as I said, we see  
25 biomethane as a very valuable resource, there is right



1 now a feed-in tariff so that wastewater treatment  
2 centers, wastewater facilities, and others, can get a  
3 feed-in tariff as they sell in to the grid, and we've  
4 worked on what those numbers really are and how costly  
5 that would be. So that the development of biomethane  
6 resources for ratepayers is a very positive  
7 development; at the same time, we have been very  
8 concerned about ways in which non-deliverable resources  
9 can game the system, whether, you know, I think that  
10 your staff report has basically identified a number of  
11 areas that have not been satisfied with regard to S.B.  
12 X12, with regard to the requirements of the various  
13 buckets in the RPS. So we want really true integrity  
14 of the RPS, is what we seek, lowest costs, we worked  
15 extensively on the cost reduction elements that were in  
16 the RPS bill, and we do see biomethane as very  
17 positive. That said, there are all kinds of  
18 verification and reality vs. on paper contracts that we  
19 think are of major concern.

20 COMMISSIONER PETERMAN: Thank you. That was  
21 all my questions. Anyone else?

22 MR. GOLDBERG: Thank you for indulging.

23 CHAIRMAN WEISENMILLER: Okay, is there anyone  
24 else who can't be here this afternoon? Of course, I  
25 was going to say, having said that -- don't be here

1 this afternoon.

2 MS. BAUTISTA: I was already packing up  
3 because I thought you were headed to lunch, so I  
4 appreciate --

5 COMMISSIONER PETERMAN: We hear all the  
6 public comment, so please.

7 MS. BAUTISTA: Thank you very much. My name  
8 is Nidia Bautista, I'm Policy Director at the Coalition  
9 for Clean Air. We are a statewide nonprofit focused on  
10 clean air for California. And we've been a strong  
11 supporter of the Renewable Energy Standard and  
12 specifically of the recent 33 percent standard here in  
13 California, Senate Bill X12. We support these policies  
14 out of concern for reducing air pollution, preventing  
15 climate change, and protecting public health. As such,  
16 we do have a preference for non-combustion renewable  
17 energy, so we are particularly appreciative of the  
18 additional environmental factors included in the new  
19 standard, which establishes a preference for  
20 electricity generation that provides more environmental  
21 benefits to the state, including reducing air  
22 pollution, displacing in-state fossil fuel combustion,  
23 and helping the state meet its greenhouse gas reduction  
24 goals.

25 California policies such as the RPS provide

1 much needed impetus and certainty to help the private  
2 sector transition to the clean energy economy, and we  
3 recognize that the S.B. X12 doesn't specifically  
4 mention biomethane for detailed analysis, as it does in  
5 other situations. However, the additional preferences  
6 in S.B. X12 do have impacts on biomethane considering  
7 the existing legal requirements and utility preferences  
8 regarding pipeline biomethane.

9           To that end, we support a thorough  
10 exploration of the issues surrounding the eligibility  
11 of biomethane for the state's RPS, so the additional  
12 clarity and certainty can be provided to all  
13 stakeholders. Quite frankly, we don't envy the  
14 position you're in today, we really wish that a lot of  
15 this had been addressed through the bill because I  
16 think that would have resulted in a much better  
17 trusting and environment that could result in --  
18 obviously we would have avoided this whole situation.  
19 But we are grateful to the CEC in the fact that you had  
20 this dialogue and discussion at the September workshop.  
21 Admittedly, we were a little surprised by the  
22 announcement about the Proposed Suspension as a result,  
23 but again, we recognize the weight of this decision and  
24 we want to make sure that's it done in a judicious  
25 manner, so as to avoid unintended consequences of

1   paralyzing the private markets to respond positively.  
2   Considering the diverse perspectives, and let me just  
3   share, we've had numerous conversations with proponents  
4   from both sides of the discussion around whether or not  
5   to suspend biomethane. We do believe, you know, we  
6   understand there are current efforts through the  
7   legislative arena, and we hope that a lot of these same  
8   folks continue to engage here so that we have statutory  
9   changes to provide that additional clarity that we all  
10   seek. We understand that, on the one hand, there are  
11   some opposing the suspension who have committed to find  
12   a reasonable way out of relying upon out-of-state  
13   biomethane to fulfill the RPS, and on the other hand,  
14   we've understood from legislative leadership that they  
15   also want to ensure that complementary policies can and  
16   should be constructed to support biomethane, for  
17   example, A.B. 118 and the Low Carbon Fuel Standards;  
18   though we recognize there are some current challenges,  
19   particularly with the Low Carbon Fuel Standard.

20           We would like to say that we want to assure  
21   that biomethane remains a viable low carbon fuel source  
22   because it is -- in many cases the alternative is we  
23   flare it, or it's put into the atmosphere, and this is  
24   bad for air quality. But we do hope, again, that these  
25   parties can engage throughout the legislative process

1 to provide resolution on these issues.

2 Now, should the agency move forward with the  
3 suspension, we do believe that a chronology of  
4 necessary benchmarks would be helpful, just so that all  
5 stakeholders are clear in terms of the progress as to a  
6 final determination on the issue. Again, thank you  
7 very much for your time.

8 COMMISSIONER PETERMAN: Thank you.

9 CHAIRMAN WEISENMILLER: No questions? Okay,  
10 so we will now be in recess until, oh, for roughly an  
11 hour, so until a quarter of.

12 (Recess at 12:40 p.m)

13 (Reconvene at 1:56 p.m.)

14 CHAIRMAN WEISENMILLER: First, the next  
15 speaker will be Jeremy Weinstein.

16 MR. WEINSTEIN: Hello, my name is Jeremy  
17 Weinstein and I'm appearing here as a California  
18 citizen and not on behalf of anybody else, or any  
19 organization. I submitted comments before and I am  
20 going to read from part of the comments that I've  
21 submitted.

22 Some biomethane opponents claim environmental  
23 and ratepayer goals, but they seem to be more concerned  
24 here about creating transmission construction worker  
25 jobs. These are not green jobs, they simply increase

1 the cost of green resources to Californians.  
2 Transmission construction worker jobs is not specified  
3 as a goal in the Public Utilities Code Section  
4 399.11(B), which sets forth the goals of the RPS. But  
5 more importantly, the policy objectives expressed by  
6 opponents of out-of-state biomethane to increase the  
7 construction of local transmission facilities, rather  
8 than use cheaper and already available out-of-state  
9 fuel for in-state renewable resources, not only  
10 needlessly increase the cost of renewable energy to  
11 ratepayers, they also put the health of Californians at  
12 risk and no discernible benefit to ratepayers.

13           A number of studies have linked living near  
14 high voltage transmission lines to childhood acute  
15 lymphocytic leukemia. A connection between childhood  
16 leukemia and living near high voltage transmission  
17 lines has been confirmed to varying degrees by official  
18 federal and official California government reports,  
19 although the medical community is not unanimous. I  
20 didn't know about these studies when I moved my family  
21 into an area of South Walnut Creek, close to twin 230  
22 KV lines in 1994, when my daughter, Simone, was five-  
23 years-old. I asked my daughter, Simone, for her  
24 permission to bring this matter to your attention, and  
25 she gave it to me. In fact, I didn't know about these

1 studies until 2004, after Simone was diagnosed with  
2 Acute Lymphocytic Leukemia, the very form of cancer  
3 linked by these studies to living near these high  
4 voltage lines. I'm extremely happy to say that, after  
5 her ordeal, which included a stroke caused by  
6 chemotherapy medication, which I'm still traumatized by  
7 day to day, although he is fine, Simone is fine, and  
8 thriving as an art major, finishing her senior year at  
9 Whittier College. I wouldn't wish having a child go  
10 through leukemia on my worst enemy, if I had a worst  
11 enemy. I recognize that there are societal tradeoffs;  
12 cancer risks suffered directly by individuals are  
13 abundant as the cost of creating goods and services  
14 that benefits society as a whole. But I hope I can  
15 convince the Commission that it should not take any  
16 steps that would increase the incidence of individual  
17 childhood leukemia patients when there is no actual  
18 benefit to society. Creating a few transmission  
19 construction jobs that are otherwise unnecessary by  
20 erecting artificial barriers to existing renewable  
21 resources, which barriers are not required by the  
22 statute, is not a societal benefit, it is, rather, a  
23 very expensive but inefficient transfer payment to some  
24 construction workers for a year or two, with a follow-  
25 on generations long negative risk of increased

1 childhood leukemia that would fall disproportionately  
2 on some families. Rather than weighing the need for  
3 more renewable resources against environmental impact,  
4 since the resources are already available but for  
5 proposed artificial limits on existing resources, so  
6 new ones could be built in California to create  
7 transmission construction worker jobs, we can instead  
8 simply weigh -- make work legislation against  
9 environmental impact. How much added danger and risk  
10 should individual members of society --

11 CHAIRMAN WEISENMILLER: Could you wrap things  
12 up? I mean, particularly since you've written -- filed  
13 the comments.

14 MR. WEINSTEIN: Yeah, almost done.

15 CHAIRMAN WEISENMILLER: Okay.

16 MR. WEINSTEIN: How much added danger should  
17 individual members of society tolerate for make work  
18 jobs? Tearing up and refilling paved roads has been  
19 not a typical use of Federal stimulus funds in recent  
20 years, but we should not have workers dig potholes in  
21 functioning roads in order to increase work for pothole  
22 fillers because it is wasteful for some families, and  
23 some families driving on the road will  
24 disproportionately bear the cost indirectly arising  
25 from this wastefulness. I think if ratepayers were



1 fully informed and given the choice between paying  
2 extra money on their electricity bill to create  
3 construction jobs to build assets that are only made  
4 necessary by artificially restricting the use of  
5 available out-of-state renewable resources, that  
6 increase the risk of childhood leukemia, or of  
7 obtaining the RPS benefit, renewable energy from out of  
8 state, without having to pay that extra money on their  
9 electricity bill, most ratepayers would choose the  
10 latter. Thank you very much for the opportunity to  
11 speak to you.

12 CHAIRMAN WEISENMILLER: Thank you.

13 MR. WEINSTEIN: Any questions?

14 COMMISSIONER PETERMAN: No questions, but  
15 thank you.

16 CHAIRMAN WEISENMILLER: Michele Wong, Clean  
17 World Partners.

18 MS. WONG: Hi. I'm Michele Wong, I'm the CEO  
19 of Clean World Partners. I'd like to start by thanking  
20 the Commission for your support. Clean World Partners  
21 is a provider of integrated anaerobic digestion  
22 systems. Our technologies were originally developed by  
23 Dr. Ruihong Zhang at U.C. Davis, whose research was  
24 largely funded by CEC's PIER Program. Since acquiring  
25 the license from U.C. Davis to commercialize these

1 technologies, CWP has received funding from the CEC to  
2 conduct feasibility analysis and predevelopment work of  
3 our Sacramento Biorefinery I Project, which will be  
4 located at the South County Sacramento Area Transfer  
5 Station. CWP is funding the construction of the  
6 facility and we will begin operations in June. On  
7 Friday, we received notification from the CEC's  
8 Alternative and Renewable Fuel and Vehicle Technology  
9 Program that we've been proposed for a grant award  
10 under the Biofuels Production Facility Solicitation,  
11 PON 601, for significant scale-up of that facility,  
12 which will produce CNG for regional vehicle fleets.  
13 We're looking forward to working with the CEC staff to  
14 implement this project.

15           Last week, we began operations on our first  
16 AD facility at American River Packaging in Sacramento.  
17 This is the first digester in the state to process high  
18 solid food and paper waste. When it reaches operating  
19 capacity, it will be producing 37 percent of the  
20 electricity used in American River Packaging's  
21 manufacturing facility.

22           Based on California laws and policies  
23 implemented, CWP and companies like ours have made  
24 significant investments to commercialize AD biogas  
25 technologies. The industry is just taking off and has

1 momentum. CWP has seven additional projects currently  
2 under development, four of which will go online in  
3 2012. As a company, we've spent millions of dollars in  
4 private capital, and created new jobs in the design,  
5 development and construction of these facilities.  
6 We're currently securing capital and financing required  
7 to complete these additional projects. An action such  
8 as the suspension of biogas from RPS would raise  
9 serious questions in the investment community. To  
10 continue the momentum, the biogas industry needs to  
11 stay on a level playing field with the other  
12 renewables.

13           Clean World Partners shares the Commission's  
14 concern about out-of-state biogas use, however, we need  
15 to continue to work together to get AD produced natural  
16 gas into the pipeline so that it can be delivered to  
17 our users. For example, CWP is developing a project in  
18 the Central Valley with an egg producer. We've  
19 designed a digester project that will digest 240 tons  
20 per day of chicken manure and produce 1.5 million  
21 standard cubic feet of RNG. This is the cleanest  
22 carbon fuel available. There is no use on-site for  
23 this amount of fuel. Unless we can inject the gas into  
24 the pipeline for delivery to customers, the project  
25 isn't feasible. We're working with GTI and other

1 industry experts to overcome the challenges of AD  
2 biogas injection. But these efforts will be stalled if  
3 there is uncertainty about the future of biogas  
4 eligibility for RPS. CWP does not oppose eliminating  
5 the use of out-of-state biogas by California utilities  
6 for RPS, however, as you consider the options you have  
7 available, we strongly urge you to protect California  
8 jobs by protecting the use of biogas technologies to  
9 meet the state's environmental goals. Thanks again for  
10 your support and for allowing us time for our comments.

11 COMMISSIONER PETERMAN: Thank you for your  
12 comments. I guess I would just add in response to your  
13 comments that, personally, myself and I think staff,  
14 based on the notice, have concerns about all  
15 biomethane, regardless of the location. Thank you.

16 MS. WONG: Okay.

17 CHAIRMAN WEISENMILLER: Kevin Best. Real  
18 Energy.

19 MR. BEST: Good afternoon. So I'm Kevin Best  
20 of Real Energy, we're in Napa, California. I also  
21 represent Ros Roca from Stuttgart, Germany. Real  
22 Energy has developed, built, owned, and operated more  
23 on-site renewable and combustion-based distributed  
24 power facilities than any other independent power  
25 producer in North America. Ros Roca is our biogas

1 development partner for the production and upgrade of  
2 biogas. They've built over 100 plants now with  
3 conversion technologies, including mechanical,  
4 biological, anaerobic digestion, and municipal solid  
5 waste, food waste, grease, and manures to produce and  
6 inject biogas all over the world. We have the world's  
7 largest 120,000 ton per year food waste anaerobic  
8 digestion plant that is located in a landfill. We'd  
9 like to do the same in California.

10 Our permitted projects and projects in pre-  
11 development in California include wastewater treatment  
12 plants, municipal waste transfer stations, landfills,  
13 and on farm facilities. Our electric customers include  
14 these facilities, as well as our distributed generation  
15 customers, which are primarily high-rise office and  
16 hotel facilities in the urban core, that are expecting  
17 our biogas deliveries through the existing natural gas  
18 infrastructure. So this is a little different than the  
19 utility sale, but our DG facilities can produce a lot  
20 of renewable power in the urban core.

21 In San Francisco, Orange County, in San  
22 Diego, we have several directed biogas developments to  
23 provide between a megawatt and four and a half  
24 megawatts at each of these facilities, this is  
25 renewable energy using directed biogas into combined

1 heat and power plants, on the roof, and in the  
2 basement of these office buildings. They want to  
3 achieve LEED Platinum status. We're also serving these  
4 constrained downtown grids and we have community choice  
5 aggregators as off-takers, as well. So when we combine  
6 and digest organic slurry from our municipal solid  
7 waste transfer station hosts, and we combine that with  
8 our energy crops that are grown on our wastewater  
9 treatment plant lands, these are fertilized lands,  
10 fertilized with biosolids from the wastewater treatment  
11 plant, they're watered with wastewater treatment plant  
12 recycled water, and then we bring this precious gas  
13 through the existing infrastructure to our urban  
14 customers. We can deliver a lot of renewable energy on  
15 the roof of a small office building, several megawatts  
16 as opposed to solar, which would just give you a few  
17 kilowatts. So we attract investment for this business  
18 model for major reinsurance groups, pension funds, and  
19 the world's largest infrastructure investors. We've  
20 had to put these investment groups on notice just as a  
21 partner, pertaining to this over reaction to self  
22 evident environmental benefits and metering and  
23 verification questions, this now has become a  
24 disclosure item from a public securities point of view,  
25 for all of us trying to deploy hundreds of millions of

1 dollars here into private renewable energy capital in  
2 California, our company alone will lose \$36 million of  
3 Federal dollars that were headed to California under  
4 the 1603 program that requires commissioning by the end  
5 of 2013, this moratorium would of course delay that;  
6 and others in this room will lose hundreds of millions.  
7 I'm afraid that the notion of a moratorium has  
8 effectively shut most of this capital down. So, in  
9 conclusion, this is devastating to energy developers  
10 that can easily help you figure out how to meter and  
11 verify this commodity, and the climate action reserve  
12 that can easily help you understand how we earn carbon  
13 credits in exchange for our obvious environmental  
14 benefits. Thank you.

15 CHAIRMAN WEISENMILLER: Thank you. Paul  
16 Sousa, Western United Dairymen.

17 MR. SOUSA: Good afternoon, Commissioners.  
18 Thank you for the opportunity to speak here today. My  
19 name is Paul Sousa, I'm an Environmental Specialist  
20 with Western United Dairymen, we are the largest dairy  
21 producer trade association in the State of California.  
22 We have also submitted written comments and I'm going  
23 to summarize those here today.

24 Western United Dairymen administer the dairy  
25 power production program for the California Energy

1 Commission and we got 18 digesters built on California  
2 dairies, all producing on-site electrical power.  
3 Western United Dairymen supports the process that  
4 you're trying to do here, but requests keeping  
5 eligibility open for in-state biomethane until the  
6 changes can be adopted. Western United Dairymen is  
7 concerned with the proposed suspension. Dairy  
8 digesters needs options for their biogas use, including  
9 pipeline injection, which is one of the cleanest  
10 options, actually, for dairies in using their biogas.  
11 The suspension would cause chaos among dairy farmers,  
12 digester developers, and financiers looking to develop  
13 these types of projects. It takes away certainly and  
14 clarity in the future of what they're trying to do.

15 Western United Dairymen respectfully requests  
16 that the Commission work to develop biogas pipeline  
17 injection RPS criteria without suspending the current  
18 process. Thank you.

19 CHAIRMAN WEISENMILLER: Thank you. Michael  
20 Boccadoro.

21 MR. BOCCADORO: Thank you. Michael Boccadoro  
22 with the Dolphin Group, and I'm offering my comments  
23 today on behalf of the Agricultural Energy Consumers  
24 Association. We work with a number of dairy and  
25 wastewater digester proponents. I want to be very



1 clear with my comments upfront, that I'm speaking only  
2 to the interests of in-state projects, and AEC went on  
3 record at the previous workshop, but we share some of  
4 the concerns that the Commission has with how the RPS  
5 has been broken, if you will, by some of the efforts by  
6 out-of-state biogas developers to bring product into  
7 California.

8           Let me also state that, while we can support  
9 a suspension of some biomethane products going forward,  
10 we can't support the one that is before the Commission  
11 today, not by any stretch of the imagination. We're  
12 asking the Commission to take a step back, we don't see  
13 the urgency in acting today, we are asking for a couple  
14 of week time period so that we can find a way to  
15 address the legitimate concerns of in-state projects.

16           I want to reiterate some of the concerns that  
17 you've heard from some of the previous folks. We've  
18 been working diligently in California for the last two  
19 years to remove barriers to digester development in  
20 California. The Secretary Ross of California  
21 Department of Food and Agriculture is leading a State  
22 and Federal task force with this very goal in mind.  
23 The Energy Commission has been participating in that  
24 process. We find it concerning that we're now here at  
25 the Energy Commission asking you to not move forward

1 with a Proposal that will wipe out all the good work  
2 that has been done. We are gaining some momentum, my  
3 phone is ringing off the hook with in-state companies  
4 looking to develop in-state projects on California  
5 dairies, and the California wastewater agencies. The  
6 proposed ban on all projects will do great harm to this  
7 momentum.

8 I want to address the three goals that your  
9 staff outlined. We can meet all those goals with in-  
10 state programs that were identified in the RPS. We  
11 displace in-state fossil fuel use, we provide  
12 significant in-state environmental benefits, and I  
13 would argue that if you pay close attention to the  
14 letter that was sent to you from the San Joaquin Valley  
15 Air Pollution Control District, it is the proposed  
16 suspension of all projects, including in-state dairy  
17 biogas projects that will actually exacerbate  
18 environmental quality in the San Joaquin Valley and  
19 impact public health because we will have no choice but  
20 to move to electrical generation, and that will have a  
21 significant impact on NO<sub>x</sub> increases in the San Joaquin  
22 Valley.

23 I want to also point out that to provide  
24 significant greenhouse gas benefits, there is a  
25 protocol, the dairy industry is one of the few in the

1 state that has a protocol for quantifying the  
2 greenhouse gas benefits, and a fourth goal, not an  
3 official goal of the RPS -- and I recognize I'm running  
4 out of time if you want to indulge me for another  
5 moment -- not an official, but that's creation of green  
6 jobs here in California, it's not official, but the  
7 Brown Administration has made it perfectly clear, we  
8 lose all of that -- in-state projects will become  
9 collateral damage. We have real projects today that  
10 are getting prepared to inject biomethane. Some of  
11 those have 1603 funding, as someone previously stated.  
12 This suspension goes and impacts those projects, that  
13 money is lost, period, because the timeframe is the end  
14 of 2013. It will also have a chilling effect on  
15 electrical energy projects. The message that gets sent  
16 is that we can't trust California Regulators to provide  
17 a level playing field for in-state projects. We've  
18 been struggling with that, projects that I'm involved  
19 with are looking at financing costs in excess of 16  
20 percent because of the perceived risk, most of it  
21 regulatory in the state. If this suspension moves  
22 forward without some consideration for in-state  
23 projects, it's going to do tremendous damage to the  
24 momentum that's there. Thank you.

25 CHAIRMAN WEISENMILLER: Okay, thank you.

1 John White.

2 MR. WHITE: Thank you, Mr. Chairman, members.

3 I'm John White with the Center for Energy Efficiency  
4 and Renewable Technologies. As we've tried to come up  
5 to speed on this issue, finding it sort of astonishing  
6 and surprising what we're faced with here, I first of  
7 all want to commend your attention to written comments  
8 that we filed, you've taken a lot of testimony today,  
9 some that's gone on quite long, and I'll try to be  
10 brief and just try to hit the highlights.

11 First of all, it's clear to me that the  
12 Commission had no idea what it was doing when it  
13 created this loophole for originally circumstances of a  
14 very different nature than what we have today. I think  
15 it's also fair to say that it's probably just as well  
16 that this debate didn't emerge during the RPS because  
17 it would probably have taken another year to get a  
18 bill. But, clearly, if you look through the prism of  
19 what we've been through in the RPS, there's parts of  
20 this story that just don't fit. A couple things are  
21 very clear to us that all these technologies, all this  
22 use of this product, are not all created equal in terms  
23 of their environmental benefits, in terms of their  
24 market benefits, and in terms of their impact on the  
25 RPS. And I think I would commend your attention --

1 solve Mr. Boccadoro's problem, okay, this is not what  
2 we need to be doing is casting a pall of uncertainty  
3 over a dedicated biomethane project in-state that  
4 they're actually using the stuff with advanced  
5 technologies, there's got to be another way to fix that  
6 in terms of definition, such as by maybe carving out  
7 projects that are generation projects, even if they go  
8 under the pipeline for a brief moment. I think we know  
9 that there's a difference.

10           The other thing that I'd say is that you're  
11 late in fixing this. And now we're dealing with all  
12 these people whose pipeline dreams have turned into  
13 entitlements. We hear a lot about protect our  
14 contracts, protect the deals that we did, these deals  
15 were going on well below the radar screen, and now  
16 we're just finding out about the scale of them, and I  
17 think a couple questions need to be answered: is this  
18 in fact -- are these projects all incremental  
19 additional methane that's being captured? It doesn't  
20 matter if it's being shifted to a different pipeline,  
21 that's not new capture, that means it's not  
22 incremental, that means it's not new, that means it's  
23 Bucket 4, except that we don't have Bucket 4. Okay?  
24 But if you compare these to the RECs that we have spent  
25 a lot of time debating and negotiating, which this

1 Commission has put in place so a very significant  
2 tracking and verification mechanism, these don't all  
3 compare well to those. We clearly with RECs have  
4 incremental, new, not being sold twice, verified, not  
5 double-counted; we don't have anything remotely like  
6 this here and you're relying on voluntary compliance to  
7 even see what the contracts are. And one example, in  
8 the case of a REC, you don't get to split off part of  
9 the greenhouse gas benefit and sell it, you know,  
10 again, all -- a REC by definition has all of the  
11 environmental attributes associated with it, that's not  
12 the case here. The case of the City of Los Angeles, at  
13 least one deal, the City gave back the greenhouse gas  
14 credits, and I would point out the City of Los Angeles,  
15 particularly amusing to me because of the fact that we  
16 were working with the Department of Sanitation trying  
17 to get DWP to buy some biomethane from Hyperion  
18 Wastewater Plant, and instead they're doing these other  
19 deals with folks in Texas, okay? Now, it may be fine  
20 to do these deals and provide incremental benefit,  
21 however, I don't think these all fit into that  
22 category. So, you know, I don't know what you're to do  
23 at this point. Commissioner Peterman, I'm very  
24 sympathetic to all the volumes of material -- we even  
25 got some lawsuit threats this morning, I'm always

1   amused when we have big business law firms threaten to  
2   use CEQA and that always tells us something else is  
3   going on. And so there's a lot of money being made.  
4   If these transactions are worth counting, they're worth  
5   counting and treating the same as other similar  
6   transactions. I would point out you can't buy RECs  
7   from beyond the Western grid, and yet in this case  
8   we've got people from Texas and Pennsylvania. We also  
9   can't count them as Bucket 1 if they don't displace  
10   anything in California, all right? So, I mean, the  
11   whole point of the Buckets was to differentiate -- not  
12   between in-state and out-of-state, but between the  
13   different functions, the different things that happen.  
14   So, for example, if you're only getting an incremental  
15   amount that isn't coming here, and you want to somehow  
16   count that the same as a brand new renewable resource  
17   that's on the Western Grid and directly interconnected  
18   to California, it just doesn't make sense.

19               Now, I will say to my friends in the  
20   municipal utility community, this is an area where you  
21   put a lot of time and energy to protect yourselves from  
22   compliance, I respect that, we have good relations with  
23   the Munis, but I would judge the Munis by their overall  
24   performance and the trajectory of their compliance.  
25   You know, it's one thing if this is topping off the

1 tank and being sure that there's adequate compliance,  
2 and another thing for us to be your whole compliance  
3 strategy and you're not buying or building anything,  
4 that can't be what we intended with the law. So I  
5 appreciate you letting me run over a little bit,  
6 there's a lot to consider here. I would really  
7 strongly -- you know, we are working to encourage and  
8 incentivize on-site generation of ultra-clean  
9 technologies, we're working on a feed-in tariff,  
10 working on legislation, that's an important part of the  
11 Commission's mission, but you can't ascribe all of the  
12 benefits of this particular group of technologies to  
13 all of the projects because it just doesn't add up. So  
14 thank you for your attention and I'm happy if you have  
15 any questions.

16 CHAIRMAN WEISENMILLER: Thank you.

17 COMMISSIONER PETERMAN: No, I was going to  
18 ask you, but I think you've touched upon it, what  
19 potential role you can see for biomethane going forward  
20 in the RPS.

21 MR. WHITE: Well, first of all, let's  
22 recognize that the methane has different benefits and  
23 different value depending on where it comes from and  
24 depending on how it's used. Okay, landfills are harder  
25 to put a pipeline, landfill gas is harder to put in a



1 pipeline than, say, dairy gas or wastewater treatment  
2 gas, because there's more crud in it, and we need to  
3 clean that more, to keep the vinyl chloride and other  
4 stuff like that out. I would defer to -- I don't know  
5 a lot about the pipeline specification, I do know the  
6 variability of the Btus is a unique challenge in terms  
7 of putting it in the pipeline system. In terms of on-  
8 site biomethane conversion and use with dairies,  
9 wastewater treatment plants, and landfills using  
10 advanced technologies, we think there is the potential  
11 for 500 or 1,000 megawatts of those kinds of resources  
12 if we get the price and the market straight, and if we  
13 develop the technologies. I think the role of the sort  
14 of capture and into the pipeline, but it doesn't get to  
15 California resource, I'm not sure that's something that  
16 ought to be the responsibility of our electricity  
17 customers, it's certainly worth doing, and from an  
18 environmental standpoint should be regulated, we  
19 shouldn't be allowing flaring, in my opinion, I'm  
20 hoping there are other alternatives, but I think these  
21 technologies are not all the same in terms of their  
22 benefits, in terms of their contributions, and in terms  
23 of their effect on the environment, and so I think, to  
24 the extent that we want to encourage them, we want to  
25 encourage the ones with the most benefit in terms of

1 reduced impact on air pollution in a place like the  
2 Central Valley, and the ones that also will help  
3 displace conventional fossil fuels in California.

4 COMMISSIONER PETERMAN: Thank you very much.  
5 I don't have any further questions.

6 CHAIRMAN WEISENMILLER: Thanks. Okay, Tamara  
7 Rasberry from SoCal Gas.

8 MS. RASBERRY: Good afternoon. Thank you,  
9 Commissioners. Tamara Rasberry on behalf of the  
10 Southern California Gas Companies. Today, Southern  
11 California Gas Company is very interested in helping to  
12 advance the State's goals in biogas, and is looking to  
13 enable the biogas producers to help condition their gas  
14 to meet the quality required to meet pipeline safety  
15 requirements -- sorry, pipeline safety standards. We  
16 believe that the action today will have a reverse  
17 effect on the business opportunities that are available  
18 in the state, that Southern California Gas Company is  
19 interested in exploring.

20 If you've reviewed our comments, I just  
21 wanted to summarize some points in the comments that we  
22 filed on Friday. We would like to point out that in-  
23 state biomethane provides at least three of the RPS  
24 benefits noted in the California Public Utility Code  
25 Section 399.11, 1) displacing fossil fuel consumption

1 within the state. Currently, Southern California Gas  
2 Company and San Diego Gas & Electric has a project in  
3 Point Loma with the Point Loma Wastewater Treatment  
4 Program in San Diego, and right now we're injecting  
5 about 550,000 cubic feet per day of conditioned biogas  
6 into the SDG&E Gas Distribution System. There is  
7 potential for biogas production and injection in SoCal  
8 Gas' service territory, we believe there is  
9 approximately 105 million standard cubic feet per day  
10 in wastewater treatment facilities, dairies, livestock,  
11 and food green waste processing. One of the other  
12 goals in RPS is to meet the state's climate change  
13 goals by reducing emissions of greenhouse gasses  
14 associated with electric generation. SoCal Gas  
15 estimates that one renewable natural gas injection  
16 project that digests 411 tons of diverted food waste  
17 per day can create annual emission reductions of  
18 approximately 56,250 metric tons of CO<sub>2</sub> equivalent.  
19 This is the equivalent of approximately 11,000  
20 passenger vehicles off the road. And the third goal of  
21 meeting the State's need for a diversified balanced  
22 energy generation portfolio, Southern California Gas  
23 Company estimates that the amount of renewable natural  
24 gas that can be produced by 2020 economic projects is  
25 approximately 30 million cubic feet per day. If all of

1 this renewable natural gas were injected into the  
2 utility pipeline network, and directed to an RPS  
3 certified generation facility, it would provide enough  
4 fuel to generate approximately 100 megawatts of  
5 renewable power.

6           There are a number of in-state injection  
7 projects in various states of development, you've heard  
8 that from the other public comments. And we believe  
9 that the suspension of the RPS qualification for the  
10 use of the biomethane produced by these projects could  
11 preclude the financing of these projects and  
12 essentially stall this rapidly developing renewable  
13 energy source. Because of this, we respectfully ask  
14 the CEC to focus -- to carve out in-state projects when  
15 voting on the moratorium today. Thank you.

16           CHAIRMAN WEISENMILLER: Thank you. No  
17 questions? Valerie Winn, PG&E.

18           MS. WINN: Good afternoon, Chair,  
19 Commissioners. Valerie Winn on behalf of PG&E. And  
20 I'd like to talk to you today about our concerns about  
21 the proposed suspension that PG&E is opposed to.  
22 First, as you've heard from many parties today, there's  
23 a lot of concern about the uncertainty that this  
24 suspension will create in the marketplace, you know, a  
25 marketplace that California has really helped develop

1 over the last several years with its consistent policy  
2 since 2007, about the eligibility of this resource for  
3 RPS. And, you know, we're now at that point where it's  
4 taken the market a while to develop, but we're now  
5 seeing, as you hear about all of these pending  
6 projects, that that stable and consistent marketplace  
7 is now showing the benefit, that we're now seeing the  
8 benefits of that stable and consistent market.

9           Our other concern with the proposed open-  
10 ended suspension is the concern about how it would  
11 affect existing contracts. The suspension notice  
12 included a limitation that could be interpreted to  
13 impair some of our existing contracts. I know everyone  
14 has probably negotiated their contracts in a number of  
15 different ways with different provisions, but PG&E has  
16 a biomethane contract that allows for a maximum volume  
17 of daily deliveries. Well, as the industry has been  
18 developing, we probably have not gotten those maximum  
19 daily deliveries over the last three or four years this  
20 contract has been in place -- it could happen, it's a  
21 10-year contract, but to limit our ability to count  
22 biomethane based on what they've actually been able to  
23 historically deliver would impair the contract, and  
24 that's something that concerns us.

25           Lastly, you know, I know Tamara mentioned the

1 few of the benefits of using pipeline biomethane at  
2 existing facilities, but we haven't talked about too  
3 much some of the other benefits of not having to build  
4 other power plants of any type in the state, but being  
5 able to use existing facilities to burn biomethane. We  
6 don't have to build new transmission lines, we don't  
7 have to worry about how to integrate more as available  
8 renewable energy because using biomethane at  
9 dispatchable resources actually adds reliability  
10 benefits to the system.

11 So for those and a number of the other topics  
12 we noted in our comment letter, we ask that you not act  
13 on this proposed suspension today. Thank you. I'm  
14 happy to answer any questions.

15 CHAIRMAN WEISENMILLER: Thanks. Anyone else  
16 in the room who has comments? So let's go to the  
17 phone. Shannon Eddy?

18 MS. EDDY: Great, thanks. Can you hear me?

19 CHAIRMAN WEISENMILLER: Yes.

20 MS. EDDY: Oh, wonderful, all right. This is  
21 Shannon Eddy, I'm with the Large Scale Solar  
22 Association. LSA supports the Proposed Suspension and  
23 we hope that the CEC will consider going even further  
24 in its biomethane eligibility policies. You've heard a  
25 lot today about ensuring a level playing field for all

1 renewables, and the Proposed Suspension actually  
2 begins to allow for that. Without the suspension,  
3 biomethane enjoys eligibility that the other renewable  
4 resources could only dream about right now. We do  
5 support the use of biomethane in the State's RPS; to  
6 the extent we know definitively that the biomethane is  
7 actually reaching the plants that are using the gas for  
8 the generation receiving RPS credits, currently it  
9 appears the only way to do that is via a dedicated  
10 pipeline, which there are few. In stark contrast, the  
11 bulk of the proposed and existing contracts purchase  
12 biomethane from across the country and as far away as  
13 states like Pennsylvania and Oklahoma. There really is  
14 no national tracking system for pipeline biomethane  
15 right now, and given the physical flow of the pipeline  
16 system, it's unlikely, if not impossible that the  
17 landfill gas from the eastern part of the country can  
18 ever deliver biomethane in California. Many of the  
19 sources of the pipeline biomethane don't displace  
20 fossil fuels within the natural gas supply basins that  
21 serve the California market, and so without this  
22 physical displacement, there's really no reduction in  
23 the amount of fossil fuel being used by California  
24 utilities, which is of course one of the main reasons  
25 that we have the RPS. Some of the pipeline

1 biomethane transactions right now are sourced from  
2 landfills with preexisting methane capture facilities,  
3 and that means that these deals are not stimulating any  
4 new methane capture, new investment, or incremental  
5 environmental benefits. As we step back and look at  
6 this, the biomethane contracts appear possibly to be  
7 suited for something like AB 32 compliance, but even  
8 that would take some work, but certainly not for the  
9 RPS, and most definitely not in the RPS' Bucket 1  
10 category.

11           There is one thing that is absolutely clear,  
12 the California RPS does not allow solar or wind  
13 contracts, or even solar and wind RECs from  
14 Pennsylvania, or Oklahoma, or Texas in the RPS. And  
15 it's entirely inappropriate to have different standards  
16 for biomethane. So for this reason, we strongly  
17 support the suspension of a first step in remedying  
18 this situation, and we encourage the CEC to actually  
19 consider phasing out the RPS eligibility of the  
20 biomethane facilities that cannot demonstrate any  
21 actual benefits to or within the California RPS.

22 Thanks. And I'm available for questions.

23           CHAIRMAN WEISENMILLER: Thank you. Any  
24 questions. No questions, thanks again. Frank Mazanec  
25 of BioFuels Energy.



1                   MR. MAZANEC: Yes, thank you, Commissioners.  
2 I'm Frank Mazanec, Managing Director with BioFuels  
3 Energy. BioFuels Energy is a project developer in San  
4 Diego, and as was mentioned just a little bit ago, we  
5 are one of the very few companies in the State, I  
6 believe, that is actually injecting biogas from the  
7 City of San Diego's wastewater facility, Point Loma  
8 Wastewater Facility.

9                   Distribution system that meets Rule 30  
10 requirements, this \$45 million project results in the  
11 directed biogas being sent to the University of  
12 California at San Diego, and the City of San Diego's  
13 Water Treatment facility at another location, where it  
14 is fueling a very efficient 2.8 and 1.4 megawatt fuel  
15 cell project. We are presently injecting the gas into  
16 the pipeline, not a project that is planned in the  
17 future, and this proposed referendum will absolutely  
18 pull the rug out from under us in terms of being able  
19 to monetize what is now being referred to as the Bucket  
20 1 requirements, and will have a significant impact of  
21 probably one of the few projects that we're actually  
22 doing what we've been encouraged to do for the last  
23 three of four years.

24                   Furthermore, we are developing a project also  
25 in the State of Washington, so we have both in-state

1 and out-of-state projects. The initial plan -- I  
2 haven't talked about jobs or heard jobs or commerce  
3 talked about -- initial plan was to configure that  
4 Washington project very similar to that which is being  
5 done in San Diego. The result of that would be the  
6 bringing of out-of-state biogas into California, and  
7 the building of additional fuel cell projects, or other  
8 energy generation projects, by private sector, to be  
9 able to sell those renewable energy credits and energy  
10 into California, creating jobs and commerce in  
11 California. If, in fact, this referendum goes through,  
12 we've actually -- we will have to divert the project  
13 from a California resource to a Washington resource,  
14 and we'll proceed with a landfill gas to energy  
15 project. We would encourage you in the strongest terms  
16 not to proceed with the suspension. And if for any  
17 reason you're so inclined to do so, I would certainly  
18 hope you would make a distinction between in-state and  
19 out-of-state resources.

20 Furthermore, I know there has been some  
21 discussion in regards to a timeframe and when it should  
22 be applicable. We actually are waiting for the Energy  
23 Commission to issue its new handbook to get classified  
24 as RPS eligible, so the distinction between whether  
25 you've already applied for that, or put all our

1 contracts in place and the project is already built.  
2 Again, in closing, I feel like I could go on for a long  
3 time on a lot of different aspects, this makes no sense  
4 to me, I'll be honest with you, in regards to the in-  
5 state resource. I know others have testified to that  
6 effect, but from a very simple man's perspective, it's  
7 just two and two doesn't equal four. Why you would  
8 have this type of impact on an in-state resource, that  
9 is providing all the environmental benefits, exactly  
10 what the state is trying to do, is absolutely beyond  
11 me. Anyway, thank you very much for your time and the  
12 opportunity to present my thoughts.

13 COMMISSIONER PETERMAN: Thank you for your  
14 comments, sir.

15 CHAIRMAN WEISENMILLER: Okay, Laura Wisling,  
16 Union of Concerned Scientists.

17 MS. WISLING: Okay, thank you. Good  
18 afternoon, my name is Laura Wisling and I'm a Senior  
19 Energy Analyst with the Union of Concerned Scientists.  
20 We are here today to provide comments in support of the  
21 temporary biomethane suspension. As several commenters  
22 have already stated, there's not a standardized system  
23 for tracking the injection of out-of-state biomethane,  
24 a standard which is required for all other RPS eligible  
25 transactions to ensure the integrity of the program.

1 And as mentioned by CEC staff, there's also  
2 uncertainty about how the use of out-of-state  
3 biomethane would require as one of the three product  
4 content categories established for the RPS in S.B. 2X,  
5 based on the language in the statute and the values  
6 that it provides to California ratepayers and the  
7 environment. As many people have already said today,  
8 this policy uncertainty is bad for the renewable energy  
9 market, in general, and will not simply disappear by  
10 ignoring the situation, and continuing to certify in-  
11 state natural gas facilities as RPS generators, simply  
12 because there's a lot of interest in using this fuel.  
13 One of the primary purposes of the RPS program is to  
14 reduce California's in-state combustion of fossil  
15 fuels, thereby reducing air pollution and greenhouse  
16 gas emissions. The Legislature establishes strong  
17 preference for directly delivered renewable energy  
18 resources in S.B. 2X because these resources can  
19 displace the in-state combustion of fossil fuels. Out-  
20 of-state biomethane, which is injected into a pipeline  
21 somewhere in the United States, may never make its way  
22 to California, does not displace the generation of  
23 fossil fuels inside California. If these facilities  
24 are already capturing methane and injecting it into  
25 pipelines, signing RPS contracts will not displace

1 additional fossil fuels or reduce greenhouse gases  
2 anywhere in the country. Load serving entities that  
3 plan to comply in large part by contracting for out-of-  
4 state biomethane, which we've heard from this morning,  
5 and in its place burn natural gas for the RPS, will  
6 fail to achieve the central purpose of the RPS Program.

7           Biomethane is currently considered eligible  
8 as a RPS resource and UCS supports this, but how out-  
9 of-state biomethane fits into the three product content  
10 categories is not at all clear. This considerable  
11 uncertainty is in and of itself a strong justification  
12 for suspending additional certifications at this time  
13 so that the CEC and the Legislature can finally provide  
14 some clarity on this issue. California's RPS program  
15 is the largest in the country and it's extremely  
16 important that we get these rules right. And the  
17 stakes are high, there's no limit on Bucket 1 resource  
18 transactions, therefore, a utility could satisfy 100  
19 percent of its RPS compliance requirements with Bucket  
20 1 resources. We should not push this issue down the  
21 road any further and simply deal with it later. We've  
22 heard from several utilities today that out-of-state  
23 biomethane will not play a large role in meeting the  
24 requirements for the first compliance period, so we  
25 believe that resolving the uncertainty now rather than

1 later is justified and necessary. Thanks.

2 CHAIRMAN WEISENMILLER: Thank you.

3 Questions? No questions. Any other speakers on the  
4 phone? Okay, thank you. Commissioner Peterman, do you  
5 want to lead off on a discussion?

6 COMMISSIONER PETERMAN: Sure. I've got lots  
7 of notes here and a lot of comments, but I'll offer at  
8 least my set of comments for now and then welcome  
9 hearing the perspectives from my fellow Commissioners.

10 First of all, thank you to everyone who filed  
11 comments, as well as presented comments on the record  
12 here today. Next to me, I've got a binder that is  
13 literally about 10 to 12 inches high, full of the many  
14 comments. And I think at last count, I saw that there  
15 were like 60, but I think even others have come since  
16 that point. I also appreciate the numerous  
17 conversations I've had with many of the stakeholders on  
18 these issues over the last number of months.

19 So it was roughly six months ago that we held  
20 a workshop in this room on this subject, and at that  
21 workshop and in the time since, I have learned a great  
22 deal about biomethane and the role it can play in the  
23 Renewable Portfolios of our many utilities in the  
24 state. My meetings with utilities, developers,  
25 marketers, environmental groups, ratepayer advocates,

1 and others, have led me to believe that 1) biomethane  
2 has a role to play in our Renewable Portfolio Standards  
3 program, 2) this is a resource that currently provides  
4 utilities a low cost option to meet the RPS targets,  
5 and 3) utilization of the natural gas pipeline system  
6 infrastructure is an efficient way to transport this  
7 resource.

8 I can also appreciate how Commissioners  
9 before me clarified in 2006 biomethane's eligibility  
10 for the RPS program, but where I do find deficiencies  
11 in the Commission's current eligibility rules for  
12 biomethane is in how we verify and track the resources  
13 and its associated environmental attributes. My  
14 conversations with staff and stakeholders have also  
15 informed me of the numerous ways the current rules can  
16 be abused and lead to fraud. The lack of a robust  
17 verification system and process for this fuel source,  
18 that program administrators and stakeholders can put a  
19 high level of faith in, could potentially jeopardize  
20 the integrity of the State's RPS Program.

21 It appears that I am not the only one who  
22 feels this way. Many party comments submitted in  
23 recent days, including those for and against a  
24 suspension suggest the need for a universal tracking  
25 system. And we are all aware that there are

1 discussions in the Legislature also that include  
2 serious consideration of implementing a tracking  
3 system, as well as differentiating the value of  
4 biomethane resources. I am not certain if these are  
5 the right solutions, but there appears to be agreement  
6 that there is a problem to solve.

7           Despite there being general agreement for the  
8 need for a robust verification process, I appreciate  
9 that some parties feel that the current deficiencies of  
10 the program do not warrant a temporary suspension. But  
11 representing an agency responsible for implementing the  
12 RPS and ensuring that it is carried out as intended by  
13 the Statute, and in the manner expected by the public,  
14 and being aware of the shortcomings of our current  
15 rules, I would feel irresponsible for waiting for a  
16 blatant violation of rules before acting.

17           In recent years, we've already had a couple  
18 of energy-related incentive programs that required  
19 suspension and reform after learning costly lessons. I  
20 do not want to see that occur with this program that is  
21 fundamental to our energy and environmental goals. I  
22 have listened very carefully to the testimony today.  
23 And I continue to believe that we need to move forward  
24 with a suspension. I expect and hope the Legislature  
25 to take action quickly and for the CEC and other



1 responsible agencies to commence action to address  
2 these deficiencies.

3 I also take seriously the economic impact the  
4 suspension may have on businesses that have stepped up  
5 to participate in the State's RPS. And the testimony  
6 today has raised concerns in my mind about the economic  
7 impact of the suspension on those who have already  
8 devoted significant resources in reliance on our  
9 existing guidebook towards developing biomethane as a  
10 viable option to achieving RPS goals. In light of  
11 that, I have some proposed suggested changes to the  
12 Notice as presented, and I would like to offer them up  
13 now, ask staff to consider whether they're possible,  
14 I'm not the lawyer here on the panel, and then turn to  
15 my fellow Commissioners to see what additional comments  
16 they may have, and then just discuss what the process  
17 is for discussing some of these suggestions.

18 So first, I would suggest consideration of  
19 suspension of new applications today, but I also would  
20 suggest that we defer voting on elements of the  
21 suspension dealing with Applications for Certification  
22 and Pre-Certification of those power plants that have  
23 executed biomethane supply contracts for biomethane  
24 that is not yet flowing in the pipeline. With respect  
25 to these applications, I'd like to direct staff to

1 gather information on the status of these projects,  
2 consider additional options, and that we bring this  
3 item back in the very near future. Again, my  
4 suggestion would refer to applications that we have  
5 already received by the end of today. So, that's my  
6 initial suggestion. I'd like staff to take a second  
7 and our attorneys to think about, feasibly, 1) is that  
8 something that we can vote on, what the process would  
9 be for that today, and in the mean time, I'll turn to  
10 my fellow Commissioners to start getting some of their  
11 initial reactions to the comments and my suggestion, as  
12 well.

13 COMMISSIONER DOUGLAS: Can I ask,  
14 Commissioner Peterman, that you repeat the two points  
15 that you just gave?

16 COMMISSIONER PETERMAN: Sure. So I'm  
17 suggesting somewhat of a bifurcation of the Order as  
18 proposed, initially. And the first is that taking up a  
19 vote today on the suspension of the receipt of new  
20 applications for biomethane facilities for the RPS, but  
21 then deferring our vote and discussion effectively on  
22 the particular aspect of how we would deal with  
23 applications that have already arrived at the  
24 Commission, and specifically dealing with Applications  
25 for Certification and Pre-Cert of these plants that

1 have executed biomethane supply contracts, but where  
2 the biomethane is not yet flowing in the pipeline. I  
3 think we've heard information today that suggests  
4 there's some information in contracts that might be  
5 valuable for us to review before making a final  
6 determination on applications we've received to date,  
7 in terms of under what rules they will be considered.

8 COMMISSIONER DOUGLAS: Thank you,  
9 Commissioner. Let me just ask because, you know, I  
10 have not been the lead on renewables during the entire  
11 trajectory of this issue, how big the universe is of  
12 applications that we have received, but in which the  
13 gas has not been flowing. Does staff have a sense of  
14 that?

15 MR. KOOTSTRA: Currently, we have about six  
16 plants that have applied for Pre-Certification where  
17 gas is not flowing, and I believe an additional upwards  
18 of eight new biomethane sources have been identified  
19 for existing certified facilities, or facilities  
20 applying for certification, though those eight sources  
21 are being sent to multiple facilities, some upwards of  
22 five or six or more.

23 COMMISSIONER DOUGLAS: All right, thank you.  
24 That's helpful. You know, I'll just make some high  
25 level comments at this point. I found myself agreeing

1 with, I think, virtually every word, if not every word  
2 and every emphasis of what Commissioner Peterman said,  
3 probably with some of my own spin on it, as well. I  
4 think biomethane is a tremendously important renewable  
5 resource, and I see a lot of faces and have seen a lot  
6 of familiar faces in the room over the course of the  
7 day, and this is an important industry; we need to  
8 develop it for renewable energy goals, we need to  
9 develop it for our clean transportation and low carbon  
10 fuels goals. So I think biomethane is important. I  
11 think that when we look at meeting our Renewable  
12 Portfolio Standard of 33 percent, and then, of course,  
13 more than 33 percent, because we're starting to think  
14 about and talk about 33 percent as a floor, not a  
15 ceiling, and think about next steps even as we gear up  
16 to meet the current requirement. The prospect of  
17 having new efficient power plants helping support and  
18 integrate that renewable energy using renewable biogas  
19 is a very welcome prospect, frankly.

20           So I think it's an important industry and we  
21 want to encourage it and, of course, in many programs  
22 at the Energy Commission, we do encourage it. And the  
23 AB 118 program came up more than once, and that's been  
24 one area that's been important and an area of great and  
25 continuing high priority by the Commission. You know,

1 at the same time, it's quite clear, both from what  
2 people have said today and from some -- many of the  
3 letters that have come in on this item, that biomethane  
4 is not currently being treated in the same way as other  
5 renewable resources are. I don't necessarily advocate  
6 for a reflexive "treat them all the same and in exactly  
7 the same way" reaction, and at the same time, I think  
8 that we should take a look at the criteria in the RPS  
9 bill and ask ourselves what are the different  
10 attributes these different types of biomethane projects  
11 are and how they fit in, how they help us meet our  
12 goals, and we certainly need better tracking and  
13 verification, and we certainly -- I guess I really hope  
14 that we can work with the industry quickly, you know,  
15 not waiting for legislative action, but starting  
16 immediately on some of the questions of just how is  
17 biomethane counted and tracked currently. Commissioner  
18 Peterman has asked a couple speakers, well, can we see  
19 contracts and so on, and I would go beyond that and ask  
20 staff and ask the industry to help us understand how  
21 biomethane is counted, with whom is it contracted, are  
22 there instances or might there be, where the GHG  
23 attribute is separated from the RPS attribute and  
24 potentially double-counted, you know, how do we think  
25 about additionality in this context. And I think there

1 are a lot of questions that come to mind for me, that  
2 we need to work on. So, the overwhelming concern I  
3 hear from the room is like, yes, we'll work on these  
4 questions, but we're concerned about investors and  
5 we're concerned about uncertainty, and so I hear that.  
6 I hope that Commissioner Peterman's suggestion, which I  
7 would support, helps reduce that uncertainty to some  
8 degree, but you know, we've got a commitment at the  
9 Energy Commission, a really longstanding one, to  
10 promoting this industry, so it would be my hope and  
11 expectation that that would continue. Those are my  
12 thoughts right now. I'd love to hear Commissioner  
13 Peterman's thoughts and the Chair's.

14 COMMISSIONER PETERMAN: I'll just interject  
15 one thing here. I think the suggestion I'm proposing  
16 will not alleviate everyone's concerns and issues and  
17 points raised about market impacts. I think it will  
18 allow an opportunity to consider facilities that may be  
19 delivering power from biomethane to the state in the  
20 near term, but it's something that I'd like to explore,  
21 and I would like to thank you, Commissioner Douglas,  
22 also for mentioning the context of transportation and  
23 some of the other State goals and, indeed, we are not  
24 the only agency that has or can or will think about or  
25 with the need to think about some of the environmental

1 attributes and ability to track biomethane. And  
2 indeed, this relates to activities at the PUC, at the  
3 Air Resources Board, CalRecycle, etc., potentially. So  
4 I would look forward to also working with our sister  
5 agencies about having -- developing something that  
6 would be beneficial to various parties in the State,  
7 and that would be useful for all the different programs  
8 in which one would consider using biomethane. So I'll  
9 stop there for now.

10 CHAIRMAN WEISENMILLER: Yeah, I wanted to  
11 thank everyone who filed written comments. I mean,  
12 certainly there was a lot of food for thought in those,  
13 and certainly also to thank Commissioner Peterman for  
14 her leadership on this. When I think she signed up for  
15 the Renewables Committee, I'm not sure she realized  
16 some of the issues she would have to help us straighten  
17 out, or at least the controversies or complexities  
18 thereof. And I certainly want to appreciate the staff  
19 for their hard work. You know, obviously Kate and  
20 Gabe, you know, are sort of sitting at the table, but  
21 have been working long hours on this, and have a small  
22 village behind them, of people who have been supporting  
23 them in this activity. So certainly we want to thank  
24 everyone for helping us come to grips with this. And I  
25 think the things I wanted to make clear was, 1)

1 certainly I support the use of biomethane, you know, I  
2 voted for the Bioenergy Action Plan, you know, a couple  
3 years ago, I certainly voted for that part of the IEPR,  
4 so in terms of -- and obviously when I came back to  
5 public service, my focus was on how do we deal with  
6 climate change, how do we get jobs in the state, how do  
7 we have the right business climate to get the  
8 investment dollars we need to move forward into the  
9 next century with a clean energy system. So, having  
10 said that, you know, a very strong supporter, but I'm  
11 also concerned about the integrity of the programs, you  
12 know, that certainly being deemed RPS means something,  
13 it certainly affects asking our public to pay more for  
14 these, and a return for the benefit. So we really  
15 really have to make sure that the benefits are there  
16 and we're delivering those benefits. And that means  
17 that, you know, we need to be -- you know, the basic  
18 question, is this really a new project? Or are we just  
19 diverting an existing flow to potentially a market  
20 where the payments are higher? You know, are there  
21 really incremental environmental benefits, I guess, is  
22 what I'm saying fundamentally. And also, the double-  
23 counting or traded issues there. The tracking and  
24 verification, again, I think we have to always be  
25 sensitive to what parts of our program are we least



1 comfortable with, or that we really need to have  
2 rigorous tracking and verification. I remember at one  
3 point there was this obscure petroleum entitlement  
4 program where, depending upon whether you had new oil,  
5 old oil, or what vintage, you got to pay a different  
6 price. And early on, one of the questions was to try  
7 to figure, well, where was the cheating most likely? I  
8 mean, obviously the Federal Government was not going to  
9 really audit every single oil transaction in the U.S.,  
10 but could at best try to figure out which of those  
11 transactions could be most troublesome from gaming and  
12 trying to focus on those. And then I'm afraid thinking  
13 about our renewable program, in general, this is the  
14 area of probably the most concern, you know, on double-  
15 counting, I mean, some of the examples, certainly John  
16 White's example about splitting off the greenhouse gas  
17 attributes from the renewable attributes, you know,  
18 again, that's sort of double selling of stuff. And so  
19 -- and certainly trying to make sure that we all know  
20 that gas traders can be very creative, but trying to  
21 make sure that that gas molecule, which we know is not  
22 quite winding to California, but that somehow green  
23 molecule is not being sold three or four different  
24 times, but just once, and we're paying for it once.  
25 And so, we really have to get the tracking and

1 verification, we have to make sure the benefits are  
2 there, and you know, I mean, obviously one of the  
3 differences is, again, this is broader than WECC, and  
4 certainly we have in the electricity space, if it were  
5 outside this country, the project would have to  
6 demonstrate they meet the environmental standards of  
7 California. So, again, there's a whole bunch of  
8 differences here, nuances, that I think we're just  
9 forced to put a pause on this program until we get it  
10 right.

11           Now, I mean, when we look at the statistics  
12 the staff started out with, you know, we were talking  
13 about one project a year for a while, and now when you  
14 look at the most recent year, we're in double digits,  
15 you know, I guess, so the next question is how much  
16 more is it going to grow and we want to make sure that  
17 -- we would like to see hundreds of projects next year,  
18 but we want to make sure they're real projects. And so  
19 I think we really have to pause, we have to suspend  
20 today, to basically say no more applications until  
21 we're sure that the program is right. And I think, as  
22 we go forward, certainly we -- I think this  
23 Administration and the Legislature and the stakeholders  
24 all need to work together to try to sort out some of  
25 the details. We have tools, our tools are limited,

1 certainly there is a broader menu of tools that the  
2 Legislature could consider, and at the same time, I  
3 certainly concur with Commissioner Peterman that, as we  
4 go forward and try to sort out what's been certified,  
5 what's been pre-certified, that we want to make sure  
6 we're doing that right, too. And I don't want to rush  
7 to judgment on that, although we have to move pretty  
8 quickly, so we're suspending, we're going to examine  
9 what's in that queue, and certainly we will need your  
10 help in that. You know, one of my first gas  
11 assignments, I got to review all the gas contracts  
12 associated with the Midland Co-Gen project, which is  
13 the largest Co-Gen project in the world, the gas  
14 contracts are roughly my height, so I don't want to  
15 deluge Gabe with tons of contracts, but we need to know  
16 the contract terms of the projects affected, and we  
17 need the staff to come up with that list, and we will  
18 need you to have an independent verification of what's  
19 there in that so that we can quickly come to grips with  
20 our next step. But, certainly we appreciate everyone's  
21 interest in this issue and your assistance on helping  
22 us get it right. So, again, I really thank you for  
23 coming up with an approach here which I think, while  
24 painful, we have to do it at this time.

25 COMMISSIONER PETERMAN: Thank you, Chair, for

1 your comments. And I think you explained where we  
2 want to be going forward very eloquently. I think it's  
3 a good time now to check in with RPS staff and attorney  
4 regarding my suggestion. Tell me how we -- if we can  
5 proceed and we'll take it from there.

6 MR. HERRERA: So, Commissioners, I think we  
7 need to be careful here. If what you have proposed is  
8 essentially removing certain of the proposed elements  
9 of the suspension so that the current Guidebook rules  
10 are in effect, that doesn't need to get re-noticed; I'm  
11 assuming that's the path you want to take and I think  
12 what we need to do is actually go through the  
13 Conditions of Suspension to make sure that if there  
14 were any provisions in there that we need to strike, so  
15 that the Commission can move forward on this, on the  
16 proposed resolution, that we do that now, that way it's  
17 clear.

18 And, first of all, based on what I've heard  
19 and comments that were made earlier, one clarification  
20 that I think we need to make to the resolution is that  
21 the suspension will not affect the RPS eligibility  
22 requirements for power plants that utilize biogas, that  
23 is produced on the side of production, or that is  
24 delivered to the power plant via a dedicated pipeline,  
25 or is delivered to the power plant via truck or rail.

1                   COMMISSIONER PETERMAN: I'm going to ask you  
2 to pause. I, with all these papers, seem to have  
3 misplaced my actual copy of the most recent Order. Can  
4 I get one? Because I want to walk through this at the  
5 same time. You would think it would be in this, but  
6 it's not. Okay, all right.

7                   MR. HERRERA: So I offer that up just as a  
8 point of clarification. A couple of the commenters  
9 suggested that we needed to clarify that point.

10                  COMMISSIONER PETERMAN: Can you articulate  
11 why this is not a change of the current Guidebook or  
12 Regs?

13                  MR. HERRERA: So portions of the suspension,  
14 what has been proposed, we are treating that as a  
15 substantive change to the Guidebook, and we needed to  
16 notice it for at least 10 days. If the Commission were  
17 to move forward with the suspension as proposed, it  
18 would be fine. Since we're taking some modifications  
19 from the dais, I think we just need to be careful that  
20 what we're doing is essentially moving forward with  
21 some of the proposed suspension terms and conditions,  
22 and other terms and conditions we're not accepting  
23 right now, which means the default is that it fall back  
24 to the current guidebook. If you were to propose  
25 additional changes upon those that have already been

1 noticed, arguably that might require an additional  
2 notice, and so I think I would like to characterize  
3 this as kind of a clarification to this proposed  
4 resolution, as well as removing certain elements so  
5 that what the Commission is approving is essentially  
6 some of the terms that are in the current Guidebook.  
7 Maybe we can do that just by going through --

8 COMMISSIONER PETERMAN: Let's walk through  
9 and maybe read it altogether without what we're  
10 proposing to exclude.

11 MR. HERRERA: Right, so I'm looking at the  
12 Conditions of Suspension in the Proposed Resolution.  
13 Condition 1 can remain as is.

14 COMMISSIONER PETERMAN: I want a minute --  
15 everyone is wrestling with papers to pull them up. Oh,  
16 I've got it.

17 MR. LEVY: Commissioners, for the public's  
18 convenience, there are more copies at the back table at  
19 the entrance to the hearing room.

20 MR. HERRERA: So no change to Condition 1, no  
21 change to Condition 2, no change to Condition 3, 3A,  
22 3B, 3C, 3D there's a slight modification and that would  
23 be that we would strike the last sentence in D and I'm  
24 talking about the sentence that reads, "No such  
25 amendment will be considered by the Energy Commission

1 during the suspension and will be subject to the  
2 requirements in place when the Commission lifts the  
3 suspension." Number 4, we would modify it so that it  
4 only reads, "Power plants that have been pre-certified  
5 for the RPS by the Energy Commission will remain pre-  
6 certified." All remaining text in that condition would  
7 be stricken. And aside from the change I read earlier,  
8 just to clarify biogas that's delivered via the  
9 dedicated pipeline, or via truck or railcar, that's  
10 just a clarification, so we would add a sentence to  
11 that effect. So the reason I'm proposing to strike  
12 those provisions in 3D and 4 is because it sounds like  
13 what you're directing staff to do is to go back and get  
14 some additional information concerning these  
15 applications that have been submitted with respect to  
16 biomethane that is already under contract, but perhaps  
17 is not flowing. And so staff would go back to the  
18 Applicants, we would gather additional information, and  
19 then we would report back to you to inform you of what  
20 we've learned, and informing you might help clarify  
21 some of these conditions. If we feel that we need to  
22 modify these terms based on what we find, we will have  
23 the option, I guess, to propose some minor changes to  
24 the Suspension Order.

25 COMMISSIONER PETERMAN: So in that context,

1 then, we would issue a notice for a future meeting to  
2 consider --

3 MR. HERRERA: Right.

4 COMMISSIONER PETERMAN: -- like a new Order  
5 with additional provisions.

6 MR. HERRERA: Right. So I think the Order  
7 would be, if what we're merely doing is clarifying what  
8 we're doing, then we would just indicate it's merely  
9 clarification; if the clarification goes beyond that  
10 and requires some modification to the terms of this  
11 suspension, then we would provide that notice in a  
12 subsequent notice.

13 COMMISSIONER PETERMAN: So just to confirm,  
14 were you suggesting, then, eliminating Conditions 5 and  
15 6?

16 MR. HERRERA: Oh, I'm sorry. Five and six  
17 would remain as is.

18 COMMISSIONER PETERMAN: Okay. Give me one  
19 second to read through this, if you don't mind.  
20 Question, Mr. Herrera.

21 MR. HERRERA: Yes.

22 COMMISSIONER PETERMAN: Regarding Condition  
23 5, I do have a question on the second page of that, the  
24 last line basically in that condition, whether --  
25 "...considering the information requesting that you seek



1 from the contracts...," whether that should be stricken,  
2 as well?

3 MR. HERRERA: Yes, that's a good catch.  
4 Thanks, Commissioner.

5 COMMISSIONER PETERMAN: That's why I have  
6 patience with this, we just want to read as we're doing  
7 this in real time. Please talk into the microphone?

8 CHAIRMAN WEISENMILLER: So sorry. So looking  
9 at five and just parsing through the last couple  
10 sentences, it says, "In addition, the application shall  
11 demonstrate that it is being produced and injected into  
12 the pipeline on or before the date of the Application  
13 for Certification." And so, probably the question is  
14 whether we want to -- whether we want to take out the  
15 "injected" part there?

16 COMMISSIONER PETERMAN: Right. Just  
17 clarifying production and injection and whether we  
18 should -- injection seems like it should be stricken,  
19 but I'm not 100 percent sure about the production.

20 CHAIRMAN WEISENMILLER: Well, again, I did --  
21 we may ultimately conclude that, but I'm not sure that  
22 we want to make that decision today.

23 COMMISSIONER PETERMAN: All the -- everything  
24 that I'm recommending striking currently is more a  
25 deferral to a future time to consider, and not a

1 negative statement on those conditions.

2 MR. HERRERA: Right, that's my understanding.

3 CHAIRMAN WEISENMILLER: Okay. And let me ask  
4 one last question, and again more to Commissioner  
5 Peterman. So if you go into six, it says,  
6 "Applications that -- submit incomplete application --  
7 not giving an opportunity to complete after the  
8 suspension takes place," and again, I'm not proposing  
9 we decide one way or another on that today, but I would  
10 propose that we, again, remove that.

11 COMMISSIONER PETERMAN: I would be supportive  
12 of that, as phrased.

13 CHAIRMAN WEISENMILLER: But basically that  
14 sentence will not -- Applicants that submit -- or will  
15 not be given an opportunity? And I guess you get to  
16 the prior sentence talks about will be returned to the  
17 Applicant. Again, we might when we finally vote on it,  
18 we might do that, but at least I think --

19 COMMISSIONER PETERMAN: I think that is a  
20 good point. We see someone choosing to walk to the  
21 dais, so I'm assuming, Mr. Tutt, that you have a  
22 clarifying suggestion?

23 MR. TUTT: Yes, Commissioners. I'm just  
24 wondering, in light of all the strike-outs, looking at  
25 the first sentence of 3C, which says to ensure that

1 amount of biomethane is not increased after this  
2 suspension, that seems in conflict with some of the  
3 decisions that you're deferring until later.

4 MR. HERRERA: Well, just in response to that  
5 point, number three does talk about facilities that are  
6 already certified, and my understanding of what was  
7 being proposed here was taking a look at Applications  
8 for Certification that are pending, and Applications  
9 for Pre-Certification, and not wanting to take any  
10 action on those until we get some more information.  
11 Again, number three was intended to apply to facilities  
12 that have already been certified, and the idea behind  
13 3C was to gather information on the biomethane sources.

14 COMMISSIONER PETERMAN: That is -- how you  
15 explained it is what I'm recommending and that's my  
16 understanding, as well. Yes, Mr. Tutt? Make it walk  
17 fast.

18 MR. HERRERA: It wouldn't affect, for  
19 example, situations where you have a pending  
20 Application for Certification that has been submitted  
21 by today, or an Application for Pre-Certification that  
22 has been submitted today, and then staff evaluating how  
23 the biomethane has been contracted for that particular  
24 facility.

25 MR. TUTT: I don't have any objection to

1 providing information about the biomethane that is  
2 currently being provided under the contracts, I just  
3 had been under the impression as we had talked about  
4 striking things out that there was a potential that  
5 amendments to these contracts could be considered  
6 because you're deferring the actual suspension of those  
7 now; and the first sentence of C indicates to me that  
8 those amendments would not be considered.

9 COMMISSIONER PETERMAN: Thank you.

10 CHAIRMAN WEISENMILLER: Mr. Herrera, we were  
11 going to give you the last word on that issue.

12 COMMISSIONER PETERMAN: Yeah, and I'm sorry,  
13 we're not -- we're absolutely clarifying questions, but  
14 we're not going to open this again for opening up  
15 public comment because this is the dais, the Lead  
16 asking for direction.

17 MR. WHITE: Just a comment, I didn't quite  
18 follow what you did with five, so I'm just asking, did  
19 you strike "is being produced and injected?"

20 MR. HERRERA: Yeah, so that whole sentence  
21 that starts off "In addition, Applicants for RPS  
22 certification shall demonstrate..."

23 MR. WHITE: That whole entire sentence is  
24 struck?

25 MR. HERRERA: Yeah.

1                   MR. WHITE:   Okay, I got it.

2                   COMMISSIONER PETERMAN:   Yeah and --

3                   MR. HERRERA:   And action on that is being

4   deferred, right?

5                   COMMISSIONER PETERMAN:   It's deferred, yeah,

6   and what I will ask is, after we go through proposed

7   strikeouts, to have Mr. Herrera read through his mark-

8   up, as well, for all of us.

9                   MR. WHITE:   And one other minor clarifying,

10   if I may?

11                  COMMISSIONER PETERMAN:   Last one, please,

12   sir.

13                  MR. WHITE:   The on-site generation of

14   electricity using biogas can be used both on-site and

15   it can be put into the grid, and it's not affected by

16   this.   Is that correct?

17                  COMMISSIONER PETERMAN:   If it is put on --

18   I'll let the --

19                  MR. HERRERA:   So my caveat there,

20   clarification, was that if the biomethane is produced

21   on the site where it's being combusted to generate

22   electricity --

23                  MR. WHITE:   Yes, that electricity can go

24   anywhere and be used.

25                  MR. HERRERA:   -- that electricity can go

1 anywhere, right.

2 MR. WHITE: Thank you.

3 MR. HERRERA: Do you want me to go ahead and  
4 read through the entire --

5 COMMISSIONER PETERMAN: Right, if you think  
6 that my requests have been captured in the strike-out.

7 MR. HERRERA: I think it would be helpful.  
8 So, "Conditions of Suspension: 1) The Suspension will  
9 suspend provisions in the Renewables Portfolio Standard  
10 Eligibility Guidebook, Fourth Edition, that allow power  
11 plants to be certified as RPS eligible if the power  
12 plant uses biomethane to generate electricity; 2) the  
13 suspension will take effect at 5:00 P.M., Pacific  
14 Daylight Time on March 28th, 2012, and will remain in  
15 effect until the Energy Commission takes subsequent  
16 action to lift the suspension; 3) power plants that are  
17 already certified as RPS eligible by the Energy  
18 Commission will remain RPS eligible and may continue to  
19 use biomethane procured under contracts with sources  
20 that were specifically identified in the power plants'  
21 approved Application for RPS Certification, and subject  
22 to the following limitations: a) the biomethane is  
23 used in accordance with the requirements of the  
24 addition of the Renewable Portfolio Standard  
25 Eligibility Guidebook, under which the power plant was

1 certified for the RPS, b) the power plants' use of  
2 biomethane is limited to the biomethane procured under  
3 contracts with sources that were specifically  
4 identified in the power plants' approved Application  
5 for RPS Certification, c) to ensure that the amount and  
6 availability of biomethane supplied to a RPS certified  
7 power plant is not increased after the suspension takes  
8 effect, power plant operator shall provide Energy  
9 Commission adequate documentation of the biomethane  
10 supplied to the power plant prior to the effective date  
11 of the suspension. This documentation shall include,  
12 but not be limited to, information on the term length  
13 of the biomethane supply contracts, the start and end  
14 dates of the supply contracts, and the terms of  
15 biomethane delivered monthly under the supply  
16 contracts, and d) any extension of a biomethane  
17 contract term, increase in biomethane supply, or other  
18 change in the supply contract that increases the amount  
19 or availability of biomethane supplied to the RPS  
20 certified power plant will be require an amendment to  
21 the power plants' RPS Certification; 4) power plants  
22 that have been pre-certified for the RPS by the Energy  
23 Commission will remain pre-certified; 5) complete  
24 applications for RPS certification and RPS pre-  
25 certification for power plants seeking to use

1 biomethane, that are received by the Energy Commission  
2 prior to the effective date of the suspension, will be  
3 processed in accordance with the Renewables Portfolio  
4 Standard Eligibility Guidebook, Fourth Edition. To be  
5 complete applications for RPS certification shall  
6 include the information and documentation specified in  
7 the Renewables Portfolio Standard Eligibility  
8 Guidebook, Fourth Edition. This information and  
9 documentation was summarized in the March 16th, 2012  
10 Public Notice of the Proposed Suspension; 6) complete  
11 applications for RPS certification and pre-  
12 certification must be either hand-delivered to the  
13 Energy Commission by no later than 5:00 P.M. on the  
14 date the suspension is adopted by the Energy  
15 Commission, or must be sent to the Energy Commission by  
16 mail and post-marked no later than the date the  
17 suspension is adopted by the Energy Commission.  
18 Notwithstanding anything to the contrary in the  
19 Renewables Portfolio Standard Eligibility Guidebook,  
20 Fourth Edition, any Application for RPS certification  
21 or Pre-Certification that is incomplete, or received by  
22 the Energy Commission after 5:00 P.M. on the date the  
23 suspension is adopted by the Energy Commission, will  
24 not be processed by the Energy Commission and will be  
25 returned to the Applicant. Applicants that submit



1 incomplete applications will not be given an  
2 opportunity to complete their applications after the  
3 suspension takes effect, therefore, Applicants are  
4 advised to take special care to complete their  
5 Applications for RPS Certification or Pre-Certification  
6 before submitting the applications to the Energy  
7 Commission; 7) the suspension will not affect the RPS  
8 eligibility requirements of power plants that utilize  
9 biogas that is produced on the site of production, or  
10 that is delivered to the power plant via a dedicated  
11 pipeline, or is delivered to the power plant via truck  
12 or railcar."

13 COMMISSIONER PETERMAN: Thank you. A  
14 question about Condition 6 and the reference is to  
15 "incomplete applications" in the latter part of that  
16 paragraph, considering the further, or the other  
17 comments or changes, would that need to be stricken, as  
18 well?

19 MR. HERRERA: So perhaps the "incomplete"  
20 portion should be stricken, but the part about  
21 "received after today," I think that needs to remain  
22 in. Is that --

23 COMMISSIONER PETERMAN: I would agree.

24 MR. HERRERA: Okay. So then, the sentence  
25 that includes that language would read -- this is in

1 number six -- "Notwithstanding anything to the  
2 contrary in the Renewables Portfolio Standard  
3 Eligibility Guidebook, Fourth Edition, an Application  
4 for RPS Certification or Pre-Certification that is  
5 received by the Energy Commission after 5:00 P.M. on  
6 the day of the suspension is adopted by the Energy  
7 Commission, will not be processed by the Energy  
8 Commission and will be returned to the Applicant."

9 COMMISSIONER PETERMAN: Is there any language  
10 needed to speak of the fact that we will be picking up  
11 some issues at a later date? Or would that be in the  
12 next notice?

13 MR. HERRERA: No, I think it would be a good  
14 idea to add a statement to that effect, that you're  
15 directing staff to collect additional data, and that  
16 you've directed us to report back within a certain  
17 period of time.

18 COMMISSIONER PETERMAN: Do we need to specify  
19 that period of time?

20 MR. HERRERA: I don't think we need to  
21 specify it, we should probably indicate, I mean, at  
22 this point if staff doesn't know exactly what  
23 information it needs, I think staff needs some  
24 discretion to be able to put together Data Requests and  
25 send that out. So I think this Resolution should leave

1 that open in terms of the information that we need.

2 COMMISSIONER PETERMAN: I would like that  
3 Data Request sent as soon as possible, considering the  
4 need to get the data, etc., and then move forward on  
5 these issues. I don't want this to be an indefinite  
6 deferral of addressing these issues. I'd like to take  
7 them up within the next month or two.

8 MR. HERREREA: Understood.

9 COMMISSIONER PETERMAN: Or the soonest  
10 Business Meeting we can.

11 MR. HERRERA: So, thinking about number  
12 eight, "Commission staff is directed to contact  
13 Applicants to gather needed information to verify  
14 biomethane supplies and contracting arrangements  
15 necessary to inform the Commission as to whether any  
16 additional requirements are needed on pre-  
17 certification."

18 COMMISSIONER PETERMAN: Yes.

19 MR. HERRERA: Something to that effect?

20 COMMISSIONER PETERMAN: Yes, I think so.  
21 Sir, you had a quick clarifying comment?

22 MR. LESLIE: Yes. My name is John Leslie,  
23 I'm appearing on behalf of Shell Energy North America,  
24 and a clarifying question with respect to 3 and 3B,  
25 there's a reference to "sources that were specifically

1 identified in the power plant's approved application."  
2 Based on the discussion among the Commissioners, I  
3 thought that the reference to sources that were  
4 specifically identified was going to be removed.

5 CHAIRMAN WEISENMILLER: No, I think basically  
6 -- assuming that there were additional sources that  
7 have filed for either certification or pre-  
8 certification, then that would be captured below. But  
9 the notion wasn't to leave three open for -- anyway,  
10 we're trying to suspend right now, a particular pause,  
11 but not have additional applications rolling into the  
12 process.

13 MR. LESLIE: No, I understand this is not an  
14 issue of additional applications for additional  
15 generation facilities, this is the issue of where a  
16 biogas production facility might need to be replaced  
17 during the course of the contract with some other  
18 biogas production facility in order to meet the  
19 contract quantities under the specific contract.  
20 That's a subject of the application and the  
21 certification. So, to eliminate this language, sources  
22 that were specifically identified in the power plants'  
23 approved application, and just leave that out, I think,  
24 would better reflect the intent here.

25 MR. HERRERA: Commissioner, can I offer a

1 counterpoint there? So right now the process under  
2 the Fourth Edition of the RPS Eligibility Guidebook is  
3 for Applicants to identify the biomethane source; in  
4 fact, you know, the producer needs to sign an  
5 attestation that identifies where the biomethane is  
6 coming from, where it's being produced. Applications  
7 that have been submitted for certification and pre-  
8 certification should have included those attestations,  
9 those forms that identified that, for this particular  
10 power plant, certain biomethane sources have been  
11 identified. I mean, I don't think we can remove that  
12 here, I don't think that was your intent. It seems  
13 like it opens it up. I mean, again, the Commission  
14 certifies power plants, not biomethane sources, so we  
15 need to connect the biomethane source to the particular  
16 power plant's Certification or Pre-Certification  
17 Application.

18 COMMISSIONER PETERMAN: Thank you for your  
19 comment, but I don't recommend that change. Thank you  
20 for that explanation, Mr. Herrera.

21 MR. LEVY: Commissioners, just so the record  
22 is clear about the deferral, would the Commission like  
23 to add another clause, a number nine or something,  
24 after Mr. Herrera's suggestion regarding the Data  
25 Request indicating that you intend to defer

1 consideration of the status of pending applications  
2 until an upcoming meeting? Yes? Something like --

3 COMMISSIONER PETERMAN: Yes, I'll speak into  
4 the mic, yes.

5 MR. LEVY: "The Commission defers  
6 consideration of the status of pending Applications for  
7 Certification or Pre-Certification until an upcoming  
8 meeting which will be separately noticed." Is that  
9 accurate?

10 COMMISSIONER PETERMAN: I'm fine with that if  
11 that's fine with the attorney.

12 MR. HERRERA: Thanks. That's the other  
13 attorney.

14 COMMISSIONER PETERMAN: I'd like to give Mr.  
15 Herrera one more time to read through -- you don't have  
16 to audibly read through -- but read through your mark-  
17 up to see if there's anything additional that you see  
18 needs to be addressed before we consider a motion.

19 MR. HERRERA: (Pause) Yeah, I think I'm okay  
20 with all those changes. Thank you, Commissioner  
21 Peterman. And I don't think there are any additional  
22 changes that are necessary.

23 COMMISSIONER PETERMAN: Okay. I think all  
24 the changes -- I don't believe the Commissioners need  
25 it read again, although I will offer to have one more

1 reading of it all the way through if your voice can  
2 handle that, Mr. Herrera, just so everyone knows where  
3 we've ended up. And I also expect this will be posted  
4 going forward?

5 COMMISSIONER DOUGLAS: Can I just suggest  
6 that Mr. Herrera either just read the parts that  
7 changed, or that you could consider moving what he read  
8 plus Mr. Levy's suggestion, if you wanted to do that.  
9 But if you'd like to make sure everybody has the  
10 changes down, then maybe he could just read the parts  
11 that changed.

12 COMMISSIONER PETERMAN: I think reading parts  
13 that changed is fine, I mean, no one is going to  
14 capture the entire thing necessarily writing it down  
15 now, and there will be a final posted at some point.  
16 Okay. Can you read the changes?

17 MR. HERRERA: Oh, yes.

18 COMMISSIONER PETERMAN: Please. Thank you.

19 MR. HERRERA: So Condition of Suspension 3D,  
20 the modified language is "any extension of a biomethane  
21 contract term, increasing in biomethane supply, or  
22 other change in the supply contract that increases the  
23 amount or availability of biomethane supplied to the  
24 RPS certified power plant, will require an amendment to  
25 the power plant's RPS Certification; 4) power plants

1 that have been pre-certified for the RPS by the Energy  
2 Commission will remain pre-certified; 5) complete  
3 applications for RPS Certification and RPS Pre-  
4 Certification for power plants seeking to use  
5 biomethane, that are received by the Energy Commission  
6 prior to the effective date of the suspension, will be  
7 processed in accordance with the Renewables Portfolio  
8 Standard Eligibility Guidebook, Fourth Edition. To be  
9 complete, Applications for RPS Certification shall  
10 include the information and documentation specified in  
11 the Renewables Portfolio Standard Eligibility  
12 Guidebook, Fourth Edition. This information and  
13 documentation was summarized in the March 16th, 2012  
14 Public Notice of the Proposed Suspension; 6) the  
15 sentence that reads starting, "Notwithstanding anything  
16 to the contrary in the Renewables Portfolio Standard  
17 Eligibility Guidebook, Fourth Edition, any Applications  
18 for RPS Certification or Pre-Certification that is  
19 received by the Energy Commission after 5:00 P.M. on  
20 the day the suspension is adopted by the Energy  
21 Commission will not be processed by the Energy  
22 Commission and will be returned to the Applicant; 7)  
23 the suspension will not affect the RPS eligibility  
24 requirements of power plants that utilize biogas that  
25 is produced on the site of production, or that is



1 delivered via a dedicated pipeline, or is delivered to  
2 the power plant via a truck or a railcar; 8) Commission  
3 staff is directed to gather additional information from  
4 applicants that have submitted Applications for RPS  
5 Certification and Pre-Certification, to verify the  
6 quantities and the amount of biomethane supplied, and  
7 the terms under which those biomethane supplies are  
8 provided. Staff is directed to report back on this  
9 information to the Energy Commission; 9) the Commission  
10 defers consideration of the status of the pending  
11 Applications for RPS Certification and Pre-  
12 Certification until an upcoming meeting when it will be  
13 separately noticed." How's that?

14 COMMISSIONER PETERMAN: Thank you. Then I am  
15 prepared to make a motion. I'm thinking how to phrase  
16 this motion. Can our Chief Counsel give me some  
17 guidance on how to frame this motion?

18 MR. LEVY: I move that we adopt the  
19 resolution as recited by Counsel Herrera.

20 COMMISSIONER PETERMAN: I move that we adopt  
21 the resolution as recited by Counselor Herrera.

22 COMMISSIONER DOUGLAS: Second.

23 CHAIRMAN WEISENMILLER: All those in favor?

24 (Ayes.) This motion passes unanimously.

25 Again, thanks for everyone's participation and help on

1     this one.

2                 COMMISSIONER PETERMAN:   Thank you.

3                 COMMISSIONER DOUGLAS:   I'd like to join you,  
4     Chair Weisenmiller, in thanking Commissioner Peterman  
5     for her leadership on this issue.

6                 COMMISSIONER PETERMAN:   There's plenty of  
7     work to be done going forward and we look forward to  
8     working with all of you on it.

9                 CHAIRMAN WEISENMILLER:   The next item is Item  
10    4, Chief Counsel's Report.

11                MR. LEVY:   I have no report today.

12                CHAIRMAN WEISENMILLER:   Item 5, Executive  
13    Director's Report.

14                MR. OGLESBY:   Nothing to add.

15                CHAIRMAN WEISENMILLER:   Item 6, Public  
16    Advisor Report.

17                MS. JENNINGS:   No report.

18                CHAIRMAN WEISENMILLER:   Okay.   Item 7, any  
19    public comment?   This meeting is adjourned.   And thank  
20    you.

21                (Whereupon, at 3:32 p.m., the business meeting was  
22   adjourned.)

23   --o0o--

24

25

1  
2  
3  
4  
5